



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MND, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for compensation for loss of rental income and damages to the rental unit and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit.

At the beginning of the hearing the Landlord claimed that he received the Tenants' evidence late. The Landlord also claimed however, that he was not prevented from responding to that evidence and did not wish to delay the hearing of the matter by adjourning it further. Consequently, the Landlord waived the late service of the Tenants' evidence on him.

### Issues(s) to be Decided

1. Is the Landlord entitled to compensation for loss of rental income and damages and if so, how much?
2. Is the Landlord entitled to keep the Tenants' security deposit?

### Background and Evidence

This month to month tenancy started on March 1, 2008 and ended on February 28, 2009. Rent was \$1,200.00 per month payable on the first day of each month. The Tenants paid a security deposit of \$600.00 at the beginning of the tenancy.

The Landlord said that in January, 2009, the Tenants told him they might be moving because the Landlord planned to do renovations and they did not want to have to deal with them. The Landlord said the Tenants went away on holidays and when they returned on February 8, 2009 they were still unsure if they would be moving. On February 9, 2009, the Tenants gave the Landlord written notice that they would be ending the tenancy on March 1, 2009.

The Landlord said the Tenants asked him if they could try to re-rent the rental unit and he initially agreed but shortly after asked them not to because he felt he was responsible to re-rent the unit. The Landlord said he advertised the rental unit on 2 on-

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line web sites and received a number of inquiries and did 2 showings but found no suitable applicants. The Landlord admitted that the Tenant continued to advertise the rental unit and to forward his telephone number to prospective tenants but they were also not suitable. The Landlord said the rental unit could not be re-rented for March, 2009 and is still not rented.

The Landlord said that he met with the Tenants on February 28, 2009 to do a move out inspection and noticed that the exterior door frame and weather stripping were damaged by the Tenants' cat. The Landlord said the Tenants offered to fix it and asked if (in the alternative) how much he wanted to repair it himself but he left in frustration (having suffered a head injury in an accident the previous day). The Landlord said he received an estimate from Thor Enterprises that stated both the frame and weather stripping would have to be replaced. The estimated cost of the materials was \$40.58 and the cost of labour (including a truck charge) was \$180.00 for 4 hours.

The Tenants said they gave the Landlord verbal notice they were ending the tenancy on January 24, 2009 but admitted they did not give written notice until February 9, 2009. The Tenants argued that the Landlord did not take reasonable steps to re-rent the rental unit. The Tenants said that they advertised the rental unit on 3 online web sites, from which they received 30 inquiries and did 23 showings. The Tenants said that many of the applicants wanted to rent the unit for March 1, 2009. The Tenants claimed that the Landlord agreed to meet for some of these appointments but never showed up. The Tenants (one of whom worked at home) said the Landlord never brought any prospective tenants to the unit to view it while they were there and never advised them if he was showing the apartment while they were not there.

The Tenants admitted that their cat scratched the door but argued that they offered to fix the damages but the Landlord would not allow them to. The Tenants claimed that it would have cost approximately \$20.00 to replace the weather stripping and that because the scratches were not deep, the door frame could have been repaired by sanding and repainting it.

## Analysis

Section 45(1) of the Act says that a Tenant of a periodic (or month to month) tenancy must give the Landlord one clear month's notice in writing that they are ending the tenancy. If the Tenant fails to do so, the Tenant may be liable for a loss of rental income to the earliest date their notice to end the tenancy could have taken effect. In this case, I find that the Tenants gave their written notice to the Landlord on February 9, 2009 that they were ending the tenancy effective March 1, 2009. However, the earliest that notice could have taken effect would have been March 31, 2009.

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Section 7(2) of the Act says that a party who suffers damages must do whatever is reasonable to mitigate their losses. This means that a Landlord who suffers a loss of rental income must make reasonable efforts to try to re-rent the rental unit as soon as possible. In this case, I find that the Landlord did not take reasonable steps to re-rent the unit. While he may have advertised the unit online (although he provided no documentary evidence of this), I find that he did not do a reasonable number of showings on his own or attend any showings set up by the Tenants. Consequently, I find that the Landlord is only entitled to a loss of rental income for one-half of March, 2009 or **\$600.00**.

Section 32 of the Act says that a Tenant is responsible for repairing or paying for repairs for damages caused by their act or neglect but a Tenant is not responsible for reasonable wear and tear. In this case, the Tenants admit that the damage to the exterior door was caused by them but they argue that the Landlord did not give them an opportunity to mitigate the damages by allowing them to do the repairs. The Landlord did not provide a copy of his estimate as evidence at the hearing but relied on that estimate in support of his position that the door frame had to be replaced. In the circumstances, I find that the Landlord should have given the Tenants an opportunity to mitigate the damages by allowing them to try to repair the door first. The Tenants claimed that the work in question could have been done in an hour. As a result, I award the Landlord the amount of **\$80.00** for the cost of repairing the door.

As the Landlord has been successful in this matter, I also find that he 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 Tenants' security deposit in partial payment of the loss of rent award. The Landlord will receive a monetary order for the balance owing as follows:

Loss of rent:	\$600.00
Door damage:	\$80.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$730.00
Less: Security deposit:	(\$600.00)
Accrued interest:	<u>(\$7.52)</u>
Balance owing:	\$122.48



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## Conclusion

A monetary order in the amount of **\$122.48** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: May 28, 2009.

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Dispute Resolution Officer