



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION AND REASONS

### Dispute Codes:

**MND, MNSD, MNDC, 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, to retain all or part of the security deposit, and to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence, to cross-examine the other party, and to make submissions during the hearing.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent and damages; to keep all or part of the security deposit; and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy agreement required the Tenants to pay monthly rent of \$850.00 due by the first day of each month. The Tenants paid a security deposit of \$425.00 on January 15, 2009. The tenancy commenced in January 2009 and terminated on May 31, 2009.

During the hearing the parties agreed that on May 10, 2009 the tenants gave the landlord verbal notice to end the tenancy effective May 31, 2009. The parties also agreed that there was no written move-in or move-out condition inspection completed by the landlord.

The Landlord is claiming loss of rental revenue for the month of June due to the failure of the Tenants to provide written notice within the time frame required under the Act. The landlord testified that they have not rented out the unit since the Tenants left.

The Landlord is claiming the following damages/loss:

carpet cleaning	94.45
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drywall repair 3 holes	225.00
bedroom door estimate	90.00
paint	20.00
stucco repair	10.00
Total:	439.45

The Landlord testified that the Tenants were to steam clean the carpets at the end of the tenancy and failed to do so. The landlord provided a receipt for this cost. The tenant testified that he does not recall any discussion in relation to the need for carpet cleaning and stated that the carpets were in better shape at the end of the tenancy than the start.

The landlord provided photographs showing damage to three small areas on walls; several behind a door. The tenant testified that he does not recall doing any damage to the walls but did agree that the door knob may have caused this damage. The tenant stated that if the door did cause this damage he would view it as normal wear and tear. The landlord provided a receipt for drywall repair and estimated the painting cost.

The bedroom door has not been replaced; the photograph shows some damage to the door. The tenant stated that the door and much of the rental unit was in rough shape, that he did not notice this damage and has no information as to how or when the damage occurred.

The landlord provided a photograph of a damaged door frame at an entry door which the landlord repaired and did not claim as damages. The tenant testified that he did cause this damage, but that he has no recollection of the stucco being damaged. The landlord repaired the damaged stucco.

### Analysis

When ending a tenancy a Tenant is required to provide the Landlord with written notice as determined by section 45 of the Act.

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The Tenants did not provide the Landlord with written notice and failed to provide adequate notice. In order to end the tenancy effective May 31, 2009 the Tenants were required to give notice prior to May 1, 2009. The notice given on May 10, if accepted by the Landlord or in writing, would be effective June 30, 2009. Therefore, the Landlord is entitled to loss of rent for the month of June.

The Landlord has failed to complete the required condition inspection reports which would have detailed the condition of the rental unit at the beginning and end of the

tenancy. There is no written tenancy agreement that set out the requirement to clean the carpets.

Section 36 of the Act states that the right of a Landlord to claim against the deposit paid is extinguished if the landlord fails to complete inspection reports and provide copies to the Tenants. The failure of the Landlord to complete the inspection reports, combined with the Tenant's testimony that he was not aware of the damages claimed by the landlord fails to support the Landlord's claim for compensation. I am not convinced that the Tenants caused the damage claimed by the Landlord and find that the Landlord has failed to provide evidence convincing me that the damage occurred during this tenancy. The Tenant did agree that he cause damage to an entry door, but this was not claimed by the Landlord.

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

Section 72(2) of the Act allows a dispute resolution officer to order that any payment made from a Tenant to a Landlord may be deducted from the deposit due to the Tenant. I have determined that the Landlord is entitled to rental loss in the sum of \$850.00, plus filing fee costs and that the Landlord may retain the deposit in partial satisfaction of their claim for compensation.

The Landlord is holding a deposit plus interest in the sum of \$425.00.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of **\$900.00**, which is comprised of loss of June, 2009 rental income 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 **\$425.00**, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of **\$475.00**. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated August 11, 2009.

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Dispute Resolution Officer