



# **Dispute Resolution Services**

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

## **DECISION**

**Dispute Codes:** CNR, MND,MNDC and FF

### **Introduction**

These applications, brought by both the landlord and the tenants, were originally set for hearing on August 20, 2009. The hearing was adjourned to give the tenant an opportunity to respond to a late submission of evidence and amended application from the landlord.

By application of July 10, 2009, the landlord had sought an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served on July 2, 2009, a request that was withdrawn as the tenants had vacated on August 2, 2009. The landlord also sought a Monetary Order for the unpaid rent and filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed. The landlord had amended his application in August to add some damages, and again in October to add further loss of rent and additional advertising costs.

By application of July 7, 2009, the tenants sought to have the Notice to End Tenancy set aside and a Monetary Order for \$250 in compensation for loss of use of a plugged bathroom sink and the claimed need for removal of a broken tree branch.

Despite having requested the adjournment and having been sent notice of the reconvened hearing, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, the tenants' application is dismissed without leave to reapply and the hearing proceeded in their absence.

As a matter of note, my interim decision made reference to one of the parties presenting a minor as a witness and noted that evidence from minors cannot be allowed. The reference incorrectly attributed that witness to the landlord when it was, in fact, directed to the tenants.

In addition, as the tenants had refused to provide the landlord with a forwarding address, I cautioned them in my interim decision of August 20, 2009 that the onus was on them to ensure they obtained any new evidence from the landlord by contacting the landlord or the Residential Tenancy Branch.

### **Issues to be Decided**

The landlord's application requires a decision on whether the landlord is entitled to a Monetary Order for unpaid rent, loss of rent, unpaid utilities, damages, advertising, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

## **Background, Evidence and Analysis**

This tenancy began February 1, 2009 under a fixed term rental agreement set to end on January 31, 2010. Rent was \$750 per month and the landlord holds a security deposit of \$375 paid on January 2, 2009.

The tenants vacated on August 2, 2009 without giving notice after having received the Notice to End Tenancy for unpaid rent served on July 2, 2009.

During the hearing, the landlord submitted the following claims and I find as noted:

**Unpaid rent/loss of rent - \$3,000.** This claim includes the unpaid rent for July and August, and loss of rent for September and October. Section 7 of the *Act* provides that, if either party to a rental agreement breaches that agreement, they must compensate the other for resulting damage or losses. The section also imposes a duty on the person making the claim to do whatever is reasonable to minimize their loss. The landlord gave evidence, including receipts, that he began advertising in late July, and except for one week in August when he thought he had new tenants, has continued to advertise through a newspaper, two internet sites and lawn signage to the time of the hearing. Nevertheless, I find that the length of the vacancy indicates the landlord might have taken further measures to find new tenants. Therefore, I will allow this claim with respect to July, August and September, but not October, to a total of \$2,250.

**Unpaid hydro for July – \$26.62.** This claim was supported by receipt and it is allowed in full.

**Refuse clean up and disposal - \$53.00.** This part of the claim is allowed in full.

**General cleaning - \$175.** This part of the claim is allowed in full.

**Carpet cleaning - \$68.25.** The landlord makes this claim for the cleaning of carpets in two bedrooms. He stated that due to rust stains left by paint cans, he had to replace a living room carpet at a cost of \$500 but makes no claim due to its age. The \$68.25 is allowed in full.

**Advertising - \$296.94.** The landlord submitted paid invoices for this amount and it is allowed in full.

**Filing fee - \$50.** As the landlord's application has succeeded on its merits, I find that the landlord should recover the filing fee for this proceeding.

Therefore, including authorization to retain the security deposit in set off, I find that the tenants owe the landlord an amount calculated as follows:

Rent for July	\$ 750.00
Rent/loss of rent for August	750.00
Loss of rent for September	750.00
Unpaid hydro for July	26.62
Refuse clean up and disposal	54.00
General cleaning	175.00
Carpet cleaning	68.25
Advertising	296.94
Filing fee	<u>50.00</u>
Sub total	\$2,920.81
Less retained security deposit	375.00
No interest due	<u>0.00</u>
<b>TOTAL</b>	<b>\$2,545.81</b>

Thus, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$2,545.81 for service on the tenants.