



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a monetary order for unpaid rent and utilities, for compensation for damages to the rental unit, for unpaid bylaw fines as well as to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial satisfaction of these amounts. At the beginning of the hearing the Landlord claimed that the tenancy had ended and as a result, she abandoned her application for an Order of Possession.

The Landlord served the Tenant by registered mail on September 17, 2009 with a copy of the Application and Notice of Hearing. According to the Canada Post online tracking system, one of the Tenant's roommates received and signed for the hearing package on September 18, 2009. I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in his absence.

### 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 fixed term tenancy started on May 21, 2009 and was to expire on May 31, 2010, however it ended on or about October 2, 2009 when the Tenant moved out. Rent was \$7,000.00 per month payable in advance on the 1<sup>st</sup> day of each month plus utilities. The Tenant paid a security deposit of \$10,000.00 on May 15, 2009.

The Tenant gave written notice to the Landlord on August 31, 2009 that he would be ending the tenancy on September 30, 2009. The Landlord said it was a term of the tenancy agreement that in exchange for allowing the Tenant to have 9 days early possession at the beginning of the tenancy that he would move out 9 days early or else compensate the Landlord for the additional 9 days (on a pro rated basis). The Landlord said that the Tenant did not pay rent for September 2009 and did not move out until approximately October 2, 2009 when she found the rental unit abandoned.

Consequently, the Landlord sought unpaid rent for September 2009 of \$7,000.00 and prorated rent for 9 days for May 2009 in the amount of \$2,100.00.

The Landlord claimed that under the tenancy agreement the Tenant was responsible for the quarterly municipal utility bills however they remained unpaid as of the end of the tenancy in the amount of \$212.37. The Landlord also claimed that one of the Tenant's room mates had two unlicensed dogs on the rental property in contravention of the tenancy agreement. The Landlord said she told the Tenant on a number of occasions to get rid of the dogs but he failed or refused to do so. The Landlord said that the Municipal ByLaw Officer levied 4 fines against the property owner totalling \$605.00 for allowing unlicensed dogs. The Landlord also said that because those fines were not paid by the Tenant, an additional amount of \$150.00 was levied for which the Landlord is now responsible.

The Landlord said that the Tenant's roommate's dogs damaged the hardwood flooring and carpets in the rental unit as well as custom wood door knobs and some wood panels. The Landlord claimed that the carpets were wool and would have been costly to replace so instead she replaced them with laminate flooring and had the hardwood floors refinished. The Landlord also said that the walls in the rental unit were damaged and had to be repaired and painted. In addition 2 windows and a glass patio door were damaged and had to be replaced.

The Landlord claimed that the Tenant damaged a pool pump and a pool cover. A term of the tenancy agreement was that the Tenant would be responsible for pool maintenance and repairs. The Landlord also claimed that the Tenant intentionally damaged the furnace in the rental unit by disconnecting wires and a thermostat.

The Landlord claimed that the Tenant left some belongings behind as well as approximately 40 bags of household garbage that he had let accumulate in the garage. Consequently, the Landlord said a commercial garbage bin had to be brought in to remove the garbage as well as the damaged carpets.

The Landlord said that a new tenant was supposed to move into the rental unit on October 1, 2009, however due to the Tenant's late departure and the need to do cleaning and repairs, the new tenant did not get possession until October 20, 2009.

In support of her claim, the Landlord provided a copy of a condition inspection report completed at the beginning of the tenancy with the Tenant and photographs of the damages to the rental unit at the end of the tenancy as well as receipts and estimates for the repairs and invoices for the bylaw fines and utilities.

## Analysis

I find that rent is unpaid for September 2009 in the amount of \$7,000.00 and that the Landlord is also entitled to recover \$2,100.00 for obtaining early possession of the rental unit pursuant to the agreement she had with the Tenant. I also find that the Landlord is entitled to compensation for unpaid utilities of \$212.37 and unpaid bylaw fines totalling \$755.00 which the Tenant agreed to pay but didn't pay.

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit clean and undamaged except for reasonable wear and tear. I find that the rental unit was in good condition at the beginning of the tenancy but that at the end of the tenancy there were a number of damages caused by the Tenant or his roommates that exceeded reasonable wear and tear. In the absence of any evidence from the Tenant to contradict the oral and documentary evidence of the Landlord, I find that the Landlord has proven the following damages:

Repairs/Replacement of	
Damaged flooring:	\$11,153.06
Painting & Repairs:	\$5,103.00
Garbage clean up:	\$367.50
Pool Pump repair:	\$2,200.00
Pool Cover replacement:	\$2,100.00
Glass replacement:	\$1,607.00
Furnace repair:	\$670.00
Materials:	<u>\$1,017.77</u>
Subtotal:	\$24,218.33

The total amount claimed by the Landlord for unpaid rent, utilities and damages comes to \$34,285.70 (not including the \$100.00 filing fee). Section 85 of the Act limits the monetary amount that can be awarded under the jurisdiction of the Act to \$25,000.00. Consequently, I find that the Landlord is entitled to a monetary order in the amount of \$25,000.00.

Section 19 of the Act says that a landlord may not require or accept a security deposit that is more than  $\frac{1}{2}$  of one month's rent under the tenancy agreement. If a landlord does accept a deposit in excess of  $\frac{1}{2}$  of one month's rent, the tenant may deduct the overpayment from rent or otherwise recover the overpayment. I find that the Landlord breached s. 19 of the Act by accepting a security deposit in excess of  $\frac{1}{2}$  of a month's rent. However, I also find that because rent for September 2009 is unpaid, the excess security deposit (\$6,500.00) may be applied to those arrears. Consequently, I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security



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deposit in partial satisfaction of the damage award. The Landlord will receive a monetary order for the balance owing of \$15,000.00.

## Conclusion

A monetary order in the amount of **\$15,000.00** 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: October 29, 2009.

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Dispute Resolution Officer