



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MND, MNDC, MNSD, FF

### Introduction

This hearing was scheduled in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord made application for a monetary Order for damage to the rental unit, a monetary Order for unpaid rent; a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant made application for a monetary Order for money owed or compensation for damage or loss, for the return of his security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Tenant declared that his \$400.00 financial claim for compensation represented the return of his security deposit and compensation for the cost of filing his Application for Dispute Resolution.

At the hearing the Tenant requested compensation for the period in August of 2009 that he did not occupy the rental unit. The Tenant was advised that his Application for Dispute Resolution did not clearly outline that he was claiming financial compensation for a portion of the rent he paid for August of 2009 and that this issue was, therefore, not an issue that could be raised in this dispute resolution proceeding. The Tenant retains the right to file another Application for Dispute Resolution, in which he claims compensation for a portion of the rent he paid for August of 2009.

Both parties were represented 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 relevant oral evidence, to ask relevant questions, and to make submissions to me.

### Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution, are whether the Landlord is entitled to compensation for damage done to the kitchen floor; for loss of revenue from the month of September of 2009; to retain all or part of

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the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution, are whether the Tenant is entitled to the return of his security deposit and to recover the filing fee for the cost of this Application for Dispute Resolution.

## Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 01, 2009; that the Tenant was required to pay monthly rent of \$700.00; and that the Tenant paid a security deposit of \$350.00 on March 28, 2009.

The Landlord and the Tenant agree that a Condition Inspection Report was not completed at the beginning or the end of this tenancy. The male Landlord stated that the Landlord made several attempts to arrange a time to complete a Condition Inspection Report at the end of the Tenancy. He stated that he went to the Tenant's place of employment on September 16, 2009, at which time he served him with a Final Notice of Condition Inspection. He stated that he did not indicate a time or date of the final condition on the Final Notice of Condition Inspection because the Tenant would not agree to a date for this inspection. The Tenant agreed that he would not agree to a date for a final inspection on September 16, 2009, in part because he believed too much time had passed since the end of the tenancy and in part because he perceived that the Landlord was acting inappropriately.

The Tenant stated that he spoke with the female Landlord on July 31, 2009 and verbally advised her that he would be ending the tenancy on August 31, 2009. He stated that he asked her at that time if she wished written notice of his intent to vacate and she advised him that it was not required. He stated that after giving his notice to end the tenancy, the Landlord asked him if he would be willing to vacate the unit by August 23, 2009. He stated that on August 12, 2009 the parties mutually agreed that this tenancy would end of August 25, 2009 and that he did vacate the rental unit on August 25, 2009.

The female Landlord stated that on August 01, 2009 the Tenant provided her with verbal notice of his intent to vacate the rental unit on August 31, 2009. She stated that the Tenant never asked her if written notice was required.

The male Landlord stated that the Tenant offered to move out early and that on August 12, 2009 the parties mutually agreed to end this tenancy on August 26, 2009. He stated that the Tenant had vacated the rental unit by August 26, 2009. He is not certain if the Tenant vacated the rental unit on August 25, 2009 as the Landlords were not at the rental unit on that date.

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The Tenant stated that he wrote his forwarding address on his business card and left the card on the kitchen counter when he vacated the rental unit. The male Landlord stated that he did not locate the forwarding address that was allegedly left on the counter. The male Landlord declared that they did not receive the Tenant's forwarding address until they were served with the Tenant's Application for Dispute Resolution package on September 17, 2009.

The Landlord is seeking compensation for loss of revenue from September of 2009, in the amount of \$700.00. The male Landlord stated that he believes the Landlord is entitled to the compensation because the Tenant did not provide proper written notice of his intent to vacate the rental unit. He further stated that he believes the Landlord is entitled to the compensation because he could not rent the rental unit until after the Tenant had participated in a condition inspection report.

The Landlord is seeking compensation for repairs to the kitchen floor. The Landlord stated that sometime during this tenancy the laminate flooring in the kitchen was damaged. The Landlord stated that the floor was in good condition at the beginning of the tenancy. The Landlord submitted an estimate, in the amount of \$357.00, for the labour to repair the laminate flooring. There is writing on the estimate that declares that the damage to the floor was caused by "standing water generating swelling". The Landlord did not submit photographs of the damaged floor.

The Tenant stated that he does not know what damage the Landlord is referring to; that he did nothing to damage the kitchen floor; and that the kitchen floor is in substantially the same condition at the end of the tenancy than it was at the beginning of the tenancy.

## Analysis

I find that the Landlord and the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$700.00.

I find that the Tenant initially attempted to end this tenancy on August 31, 2009 by giving the Landlord verbal notice of his intent to vacate the rental unit on that date. I find that on August 12, 2009 the Landlord and the Tenant mutually agreed to end this tenancy on August 25, 2009. Although the parties did not agree to end this tenancy in writing, as is required by section 44(1)(c) of the Act, I find that it is clear from their actions and their testimony that the agreement to end the tenancy on August 25, 2009 was mutual.

I find that this tenancy ended on August 25, 2009 by the mutual consent of the parties and that it did not end on August 31, 2009 on the basis of the verbal notice to end

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tenancy that was initially provided by the Tenant. Although neither party complied with the Act in regards to the mutual consent to end this tenancy, I find that neither party was unduly prejudiced by the non-compliance with the Act as it was apparent they were both in agreement with the date that the tenancy would end.

As this tenancy ended by mutual consent, I find that the Landlord is not entitled to compensation for loss of revenue for the month of September on the basis that the Tenant did not provide proper written notice. I find that the parties mutually agreed to end this tenancy on August 25, 2009 and that the Tenant is not, therefore, liable for any loss of revenue that resulted from that mutual agreement.

I find that the Landlord is also not entitled to compensation for loss of revenue on the basis that the Tenant did not agree to participate in a condition inspection at the end of the tenancy. Landlords have the right to enter into a new tenancy agreement without completing a condition inspection with the vacating tenant, provided the landlord offers the vacating tenant at least two opportunities to participate in the inspection, one of which must be in writing. As the Landlord could have provided the Tenant with two opportunities to participate in a condition inspection prior to the end of August, I find that the Tenant's failure to complete in a condition inspection had no bearing on the Landlord's inability to find a new tenant for the rental unit for September of 2009.

I hereby dismiss the Landlord's application for compensation for loss of revenue for the month of September of 2009, as I do not find that the Tenant's actions significantly contributed to the loss of revenue.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proving that the Tenant damaged the kitchen floor rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show that the Tenant damaged the flooring in the rental unit. In reaching this conclusion I was strongly influenced by the absence of documentary evidence, such as photographs or a Condition Inspection Report, that corroborates the Landlord's claim that the kitchen floor in the rental unit was in good condition at the beginning of the tenancy and by the absence of evidence that refutes the Tenant's testimony that the kitchen floor was in substantially the same condition at the end of the tenancy than it was at the beginning of the tenancy. As the Landlord has not established that the condition of the floor at the beginning of the tenancy, I cannot conclude that the floor was damaged during this tenancy. On this basis, I dismiss the Landlord's application for compensation for damages to the kitchen floor.

Conversely, the burden of proving that the Tenant provided the Landlord with his forwarding address prior to September 17, 2009 rests with the Landlord and I find that

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the Tenant has submitted insufficient evidence to show that the Landlord received the forwarding address that the Tenant alleges was left inside the rental unit at the end of the tenancy. In reaching this conclusion, I was strongly influenced by the Tenant's testimony that he left his forwarding address on the back of a business card at the end of the tenancy and I find that this card could have been easily overlooked or inadvertently discarded by the Landlord when the Landlord took possession of the rental unit.

## Conclusion

I find that the Landlord has not established a monetary claim. I therefore find that the Tenant is entitled to a full refund of his security deposit, in the amount of \$350.00.

I find that the Landlord's Application for Dispute Resolution has been without merit and I dismiss the Landlord's application to recover the fee for filing this Application for Dispute Resolution. I find that the Tenant's Application for Dispute Resolution has merit, and I find that he is entitled to recover the fee from the Landlord for the cost of filing the Tenant's Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order for the amount \$400.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: November 05, 2009.

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