



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MNSD, (MND), FF

### Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, for carpet cleaning expenses and to recover the filing fee and service expenses for this proceeding. The Landlord also applied to keep the Tenant's security deposit.

### Issues(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income and carpet cleaning expenses and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This fixed term tenancy started on November 27, 2008 and was to expire on December 31, 2009 however it ended on October 2, 2009 when the Tenant moved out. Rent was \$1,275.00 per month. The Tenant paid a security deposit of \$637.00 at the beginning of the tenancy.

The Landlord said that the Tenant gave written notice on September 22, 2009 that he was ending the tenancy on September 30, 2009. The Landlord claimed that he was unable to re-rent the rental unit until November 1, 2009. The Landlord also claimed that he incurred carpet cleaning expenses of \$75.00 and service expenses of \$20.00.

The Tenant said that even though he told the Landlord on September 21, 22 and 23, 2009 that he would be moving at the end of that month, the Landlord misunderstood and thought he meant the end of October 2009. As a result, the Tenant claimed that the Landlord did not start looking for a new tenant until the beginning of October 2009. In particular, the Tenant said the Landlord did not place an advertisement in Craig's List and did not show the unit until the beginning of October 2009. The Tenant argued that had the Landlord started looking for a new tenant when he was given the Tenant's written notice, he should have been able to re-rent the rental unit for October 2009. The Tenant also claimed that he received an e-mail from his former neighbours on October 26, 2009 advising him that a new tenant had moved into the rental unit on or about October 22, 2009.

The Landlord claimed that he placed a sign on the rental property and started showing the rental unit once he got the Tenant's written notice. The Landlord argued that even though the rental property is located in a desirable location, it was difficult to rent it mid-month.

## Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

The Landlord said he re-rented the rental unit as of November 1, 2009. The Tenant claimed the Landlord re-rented the rental unit on October 15, 2009 as he indicated on his application but in any event no later than October 22, 2009 as claimed by his former neighbours. In his application, the Landlord stated "I couldn't rent apartment till today, 15 October 2009." The Landlord argued that he meant that as of October 15, 2009, he had still not rented the apartment. I accept the Landlord's explanation given that he would be required under s. 38(1) of the Act to make a claim against the Tenant's security deposit with 15 days of the end of the tenancy. However, I do not accept the Landlord's evidence that a new tenancy did not start until November 1, 2009 given the contradictory evidence of the Tenant that a new tenant was residing in the rental unit on or about October 22, 2009. I find on a balance of probabilities that a new tenant was allowed by the Landlord to reside in the rental unit as of October 22, 2009.

The Tenant further argued however, that the Landlord could have found a new Tenant for October 1, 2009 had he taken steps to re-rent the rental unit as of September 22, 2009. The Landlord's evidence was that he did start showing the rental unit and advertising it as of September 22, 2009. The Tenant bears the onus of proof on this point, however, given the contradictory evidence of the Landlord and in the absence of any corroborating evidence from the Tenant to resolve the contradiction, I find that there is insufficient evidence that the Landlord failed to mitigate his damages by not trying to re-rent the rental unit as of September 22, 2009. Consequently, I find that the Landlord is entitled to a loss of rental income for October 1 – 21, 2009 in the pro-rated amount of **\$863.71**.

The Landlord also sought carpet cleaning expenses of \$75.00 and service expenses of \$20.00 however he provided no evidence in support of those claims and as a result they are dismissed without leave to reapply. As the Landlord has been partially successful



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in this matter, I find that he is entitled pursuant to s. 72 of the Act to recover one-half of his filing fee or **\$25.00**. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit and accrued interest in partial payment of the damage award. The Landlord will receive a monetary order for the balance owing as follows:

Loss of rental income:	\$863.71
Filing fee:	<u>\$25.00</u>
Subtotal:	\$888.71
Less: Security deposit:	(\$637.00)
Accrued interest:	<u>(\$0.91)</u>
Balance Owing:	\$250.80

## Conclusion

A monetary order in the amount of **\$250.80** 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: February 09, 2010.

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Dispute Resolution Officer