



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a monetary order for unpaid rent, for a loss of rental income, for compensation for cleaning and repairs, for liquidated damages and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit and pet damage deposit.

The Landlord said she served the Tenants with the Application and Notice of Hearing by registered mail on October 27, 2009 to a forwarding address provided by them. Based on the evidence of the Landlord, I find that the Tenants were served as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### Issues(s) to be Decided

1. Are there arrears of rent and if so how much?
2. Is the Landlord entitled to compensation for cleaning and repairs and if so, how much?
3. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
4. Is the Landlord entitled to liquidated damages?
5. Is the Landlord entitled to keep the Tenants' security deposit and pet damage deposit?

### Background and Evidence

This fixed term tenancy started on December 9, 2008 and was to expire on December 31, 2009 however it ended on October 21, 2009 when the Tenants moved out. Rent was \$730.00 per month. The Tenants paid a security deposit of \$365.00 and a pet damage deposit of \$200.00 on December 12, 2008.

The Landlord said the Tenants have rent arrears of \$40.00 for August 2009 and did not pay rent for September and October 2009. The Landlord also claimed that at the end of the tenancy, the Tenants left a substantial amount of belongings and garbage behind in the rental unit. The Landlord also claimed that the rental unit could not be re-rented for November 2009 because she had to remove the Tenants belongings, clean the unit, drapes and carpets and repaint the suite.

The Landlord also sought to recover 3 late payment fees of \$20.00 each and liquidated damages of \$300.00 as a result of the Tenants ending the tenancy early.

## Analysis

In the absence of any evidence from the Tenants to the contrary, I find that the Landlord is entitled to recover unpaid rent of **\$40.00** for August 2009, **\$730.00** for September 2009 and **\$730.00** for October 2009. I also find that the Landlord is entitled to recover a late payment fee of \$20.00 for each of these months (for a total of **\$60.00**) pursuant to a term in the Parties' tenancy agreement to that effect.

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. 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. Consequently, even though the Tenants moved out as a result of a Notice to End Tenancy served on them by the Landlord, they are still potentially liable for a loss of rental income up to the end of the tenancy and as a result, I find that the Landlord is entitled to a loss of rental income for November 2009 in the amount of **\$730.00**.

RTB Policy Guideline #4 – Liquidated Damages states that a liquidated damages clause in a tenancy agreement is enforceable only if the amount agreed to is a genuine pre-estimate of the loss the Landlord will incur as a result of ending the tenancy early otherwise, the clause may be held to constitute a penalty and it will not be enforceable. Clause 3(a) of the parties' tenancy agreement states (in part) that if the tenant ends the tenancy prior to the end of the fixed term, the tenant is required to pay \$300.00 as liquidated damages to cover administration costs. In the absence of any evidence from the Tenants to the contrary, I find that the liquidated damages clause is a pre-estimate of damages and is enforceable. Consequently, the Landlord is entitled to recover **\$300.00** for this part of her claim.

The Landlord argued that the Tenants did not leave the rental unit clean and undamaged at the end of the tenancy as they are required to do under s. 37 of the Act. In support of her claim for garbage removal, cleaning and painting expenses, the Landlord provided a copy of a move out condition inspection report (which was not completed with the Tenants) and photographs taken of the rental unit on October 21, 2009.

Section 35 of the Act requires a landlord to complete a condition inspection report with the Tenants at the end of the tenancy. Section 17 of the Regulations to the Act says

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that the Landlord must offer the Tenants 2 opportunities to participate in a move out inspection with the last opportunity being given to the Tenants in a document called a Notice of Final Opportunity to Schedule a Condition Inspection. The Landlord claimed that the Tenants handed in their keys, gave a forwarding address and left. I find that there is no evidence that the Landlord made any attempt to schedule a move out condition inspection with the Tenants.

However, in the absence of any evidence from the Tenants to the contrary, I find that the Tenants did not leave the rental unit reasonably clean and undamaged at the end of the tenancy and as a result, the Landlord is entitled to be compensated for the expenses she incurred to remove items abandoned by the Tenants and to clean and paint the rental unit. Consequently, I find that the Landlord is entitled to the following amounts:

August 2009 rent:	\$40.00
September 2009 rent:	\$730.00
October 2009 rent:	\$730.00
November 2009 rent:	\$730.00
Late payment fees:	\$60.00
Liquidated damages:	\$300.00
Garbage removal:	\$350.00
Painting:	\$367.50
General Cleaning:	\$100.00
Carpet Cleaning:	\$73.50
Drape Cleaning:	<u>\$20.00</u>
Subtotal:	\$3,501.00
Less: Overpayment:	<u>(\$2.00)</u>
	\$3,499.00

I also find pursuant to s. 72 of the Act that the Landlord is entitled to recover the \$50.00 filing fee for this proceeding. The Landlord also sought to recover the \$50.00 filing fee she paid for a previous proceeding which was scheduled for hearing on October 9, 2009. However, in that hearing, the Landlord's application was dismissed because the evidence showed that the Tenants had not been served with the application. Consequently, I find that the Landlord is not entitled to recover the filing fee for the hearing on October 9, 2009 and that part of her application is dismissed.

Section 36 of the Act says that the Landlord's right to claim against the security deposit for damages to the rental unit is extinguished if the Landlord does not do a move out inspection with the Tenants. I find that the Landlord breached s. 35 of the Act by not giving the Tenants an opportunity to participate in a move out inspection.



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I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep \$565.46 representing the Tenants' security deposit, pet damage deposit and accrued interest to compensate her for the damages. The Landlord will receive a monetary order for the balance owing in the amount of \$2,983.54.

## Conclusion

A Monetary Order in the amount of **\$2,983.54** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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 03, 2010.

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Dispute Resolution Officer