



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNSD, MND, MNR, MNDC, FF

### Introduction

This was a cross-Application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for unpaid rent, damages to the rental unit, loss of revenue, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant has made an Application requesting return of double the deposit paid and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

The evidence submitted by each party was served to only the Residential Tenancy Branch; therefore, I did not consider the evidence in forming my decision.

### Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid?

Is the landlord entitled to a monetary Order for damages to the rental unit, unpaid rent and loss of revenue?

Is the landlord entitled to retain the deposit paid by the tenant?

Is either party entitled to filing fee costs?

### Background and Evidence

The tenancy commenced in February 2008. The parties do not agree if the tenancy term commenced on the 6<sup>th</sup> of the month or the 1st of the month. On February 6, 2008 the tenant paid a deposit in the sum of \$600.00; rent was \$1,075.00 and in January 2009 the landlord acknowledged the rent was reduced to \$975.00. There was no written tenancy agreement.

The tenant gave the landlord verbal notice ending her tenancy some time in mid-to late September 2009 and moved out of the rental unit on either October 6 or 8<sup>th</sup>. On October 4<sup>th</sup> or 5<sup>th</sup> the tenant taped a note to the landlord's door which provided the landlord with the tenant's phone number and an address where her deposit could be mailed.

The landlord recalled receiving the note that was taped to the door but could not recall the details of that note. The landlord confirmed that he did intentionally keep the deposit as there was damage to the rental unit.

No move-in or move out condition inspection was completed.

The landlord has claimed the following:

Unpaid October 2009 rent	975.00
Damages to rental unit	2,050.00
	4,000.00

The landlord believes the tenant moved out of the rental unit on October 8, 2009 and that the unit was left in disarray. The landlord has claimed compensation for repairs that were required to the bathroom, kitchen and flooring. Due to the repair work the rental unit was not able to be rented out for November 2009.

### Analysis

In relation to the tenant's claim for return of double the deposit paid, I find that the tenant has established her entitlement to that amount. Section 38(1) of the Act requires a landlord to either return the deposit or submit an Application claiming against the deposit within fifteen days of receiving the tenants forwarding address and the end of the tenancy, whichever is later. If the landlord does not claim against the deposit or return it within fifteen days, section 38(6) of the Act requires a landlord to return double the deposit paid.

I find that the landlord had the tenant's forwarding address no later than October 8, 2009 and that he did not file an Application claiming against the deposit until December 9, 2009. I also note that the deposit collected by the landlord exceeded the allowable

amount, as provided by section 19 of the Act; allowing no more than the equivalent of ½ of one month's rent payable.

I find whether this tenancy term ran from the 6<sup>th</sup> day or the 1<sup>st</sup> day of each month that the tenant failed to provide written notice to end her tenancy, as required by section 45 of the Act. Section 45 of the Act requires a tenant to give the landlord one full month's notice and the notice must be given at least one day prior to the day in the month that rent is due. Section 52 of the Act requires any notice ending a tenancy to be in writing.

Even if the tenant gave notice in mid-September and it had been in writing, that notice would not have been effective until either October 31 or November 5, 2009. Therefore, I find that the tenant did owe the landlord rent for the month of October 2009 and that the landlord is entitled compensation in the sum of \$975.00 unpaid rent.

In relation to the landlord's claim for damages to the rental unit, when making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The landlord provided no evidence of damages that are claimed. There is no move-in or move-out condition inspection to rely upon, no photographic evidence of damages and no receipts verifying any expenditure that would support a claim in the sum of \$2,050.00. The tenant submits that the floors were damaged as the landlord had installed laminate in the bathroom and that it was lifting due to the moisture. The tenant made the landlord aware of this problem earlier in the tenancy; this was not disputed by the landlord.

Therefore, in the absence of any evidence that damages were caused by the tenant and based upon the balance of probabilities and the lack of any verification of the amount claimed, I find that the claim for damages to the rental unit is dismissed without leave to reapply.

As the claim for damages to the rental unit is unsubstantiated and dismissed, I find that the claim for loss of November rent revenue is dismissed without leave to reapply. I also base this decision on the lack of any supporting documentation that the landlord required over 6 weeks to make any required repairs. The tenant moved out by October 8, 2009 which provided the landlord 3 weeks in which to prepare the unit for a new tenant.

The landlord is currently holding a deposit plus interest in the sum of \$608.11.

As each Application has merit I find that each party is responsible for their own filing fee cost.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,208.11, which is comprised of double the deposit paid, plus interest.

I find that the landlord has established a monetary claim in the amount of \$975.00 for unpaid October 2009 rent. The balance of the landlord's Application is dismissed without leave to reapply.

Based on these determinations I grant the tenant a monetary Order for **\$233.11**. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Neither party is entitled to return of the filing fee paid.

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: March 10, 2010.

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Dispute Resolution Officer