



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for loss of rent revenue, for unpaid rent, for damage to the rental unit, 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.

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.

### Preliminary Matter

At the start of the hearing the landlord withdrew the portion of his claim that included items alleged to have been stolen by the tenant in the sum of \$947.50. The landlord located the belongings.

During the hearing the landlord withdrew the portion of his claim for painting costs.

The tenant did not serve her evidence to the landlord; therefore it was not considered in determining this decision. However, the tenant was at liberty to provide oral testimony in relation to any of her evidence.

The portion of the landlord's claim for unpaid rent relates to his claim for loss of November rent revenue.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the rental property?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to compensation for loss of November 2009 rent revenue?

### Background and Evidence

This written tenancy agreement commenced on June 1, 2009 for a one year fixed term, ending June 1, 2010. Rent was \$850.00 per month. The tenant paid a deposit in the sum of \$425.00 on May 15, 2009 and a further \$75.00 on October 19, 2009. No move-in or move-out condition inspection was completed or offered by the landlord.

The landlord wanted the tenant to enter into a new tenancy agreement, changing the terms allowing the tenant use of additional space, resulting in an increase in rent to \$1,000.00 per month. The tenant paid the increased rent from August to October inclusive but had refused to sign a new tenancy agreement as there was a dispute in relation to some of the terms the landlord wished to change.

On October 12, 2009 the tenant received a written eviction notice from the landlord instructing her to vacate by November 30, 2009 due to a failure of the tenant to agree to sign a new tenancy agreement. The tenant read this document as evidence of the direction given by the landlord. The next day the tenant received a letter from the landlord which rescinded the notice given the previous day. The following day the tenant told the landlord that she was responding to his notice and that she would leave the rental unit.

The tenant's mother testified that her daughter had talked with her about the notice the landlord had given her, demanding that she move out. The witness stated that this notice made it easy for her daughter to make the decision to leave, as the tenancy had been difficult.

The landlord stated that the tenant moved out of the rental unit on October 25, 2009. The landlord advertised the unit on a popular web site and did not locate new tenants for November 1, 2009. The landlord could not provide the details or dates of this advertisement. The landlord is claiming loss of November rent.

The landlord is claiming the following:

Carpet cleaning	115.50
Remove garbage and old sofa to dump	85.00
Loss of November rent	1,000.00
Hydro to October 16, 2009	103.81
Hydro per diem to November 30	150.75
City water, sewer per diem to November 20, 2009	84.38
Teresen gas \$6.50/day for 34 days	110.50
	1,724.94

The landlord claimed carpet cleaning costs and submitted a receipt dated November 7, 2009 in the sum of \$115.50. The landlord stated the tenant failed to have the carpets professionally cleaned; the tenant explained that prior to moving in the carpets had not been cleaned. The tenant stated that the previous tenants had pets and that the landlord's own dog had urinated on the carpets. The landlord could not provide information as to when the carpets had been cleaned prior to this tenancy.

The landlord repaired a doorway baseboard that was damaged by the tenant's cats. The tenant stated they had gone away for the weekend and left a heavy rug in front of the doorway, in order to block the cats from scratching at the door. The landlord acknowledged entering the tenant's rental unit while she was away, to let a cat in and did not deny that he may have moved the rug that had been protecting the door. The amount claimed is an estimate of the cost if the repair had been completed by a professional.

The tenant left a couch and a shelving unit in the rental unit. The landlord claimed removal costs.

The written tenancy agreement required the tenant to pay 30% of hydro and 50% of gas and city water and sewer bills. The landlord claimed a per diem rate from October 16 to November 30, 2009. The tenant agreed to accept the cost of the hydro bill that is supported by the evidence, in the sum of \$103.81.

The landlord submitted a City of Victoria utility bill covering the period April 16 to August 15, 2009. The landlord has claimed a per diem rate of \$3.75 and charged 30% from June 1 to August 1 and 50% from August 1 to August 15<sup>th</sup> in the sum of \$96.75. The landlord's list of costs claimed indicates that he claiming \$84.38 for these costs. This portion of the claim was not disputed by the tenant.

The landlord has claimed unpaid gas costs and submitted a Teresen bill dated December 9, 2008.

The landlord had claimed costs for repair of a wall and withdrew that claim as he agreed with the tenant that the damage occurred prior to her tenancy.

### Analysis

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.

I find, based upon the tenancy addendum signed between the parties on May 1, 2009, clause 15, that the tenant was required to have the carpets professionally cleaned at the end of the tenancy and that the landlord is entitled to compensation.

I dismiss the claim for carpet repair. This claim related to replacement of a baseboard that I find was damaged as the result of the landlord having entered the suite, in the absence of the tenant, and removing the rugs that had been placed there to protect the carpet.

In the absence of any verification of costs for disposal of items I dismiss the claim for removal of items left in the rental unit.

In relation to the notice the landlord issued to the tenant demanding that she move out, Residential Tenancy Branch policy suggests that a landlord may not unilaterally

withdraw a notice and that the consent of tenant must be given allowing the notice to be withdrawn or abandoned.

I find, based upon the suggested policy and the testimony of the parties and the witness, that the tenant did not breach the Act when she acknowledged the notice and moved out of the rental unit in response to that notice. The tenant told the landlord she would leave the unit and I find that the landlord may not benefit from his breach of the Act by claiming a loss of rent revenue. The landlord issued a notice that was not in the approved form, that failed to give reasons as required by the Act and did not provide the tenant with information that would guide her to dispute the notice. A landlord may not arbitrarily rescind a notice; therefore, I find that the landlord's claim for loss of November rent revenue is dismissed without leave to reapply. I also base this decision on the lack of any evidence indicating the landlord advertised the vacancy.

The tenant agreed to the deduction for hydro costs in the sum of \$103.81. The portion of the landlord's claim for hydro costs beyond October 16, 2009 is dismissed as the landlord did not submit any verification of the claim for hydro costs beyond October 16, 2009. Further, I find that the tenant is not responsible for any costs beyond the time she vacated the rental unit in response to the notice given by the landlord.

I find that the landlord is entitled to the City of Victoria utility costs in the sum of \$96.75, which are supported by a bill to August 15, 2009 inclusive. This was not disputed by the tenant.

I dismiss without leave to reapply the claim for Teresen gas costs as the landlord has submitted a bill that pre-dated the tenancy and provided no verification of the amount claimed.

Therefore; I find that the landlord is entitled to the following:

	Claimed	Accepted
repair hallway carpet	75.00	0
Remove garbage and old sofa to dump	85.00	0
Loss of November rent	1,000.00	0
Hydro to October 16, 2009	103.81	103.81
Hydro per diem to November 30	150.75	0
City water, sewer per diem to Nov. 30	96.75	96.75
Teresen gas \$6.50/day for 34 days	110.50	0
	1,724.94	316.06

Therefore, I find that the landlord is entitled to compensation in the sum of \$316.06 and that the tenant is entitled to return of the balance of the deposit in the sum of \$183.94.

I find that the balance of the landlord's claim is dismissed without leave to reapply.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant is at liberty to submit an Application in relation to the additional rent increase imposed, which was raised during this hearing.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$366.06, which is comprised of compensation for damages and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of **\$366.06**, in satisfaction of his monetary claim.

Based on these determinations I grant the tenant a monetary Order in the sum of **\$183.94**. 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.

I find that the balance of the landlord's claim is dismissed without leave to reapply.

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 18, 2010.

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Dispute Resolution Officer