



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, 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 compensation for an order of possession for breach of an agreement, a monetary order for and compensation for loss or damage and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant made Application for Dispute Resolution requesting compensation for damage or loss, return of double the deposit paid and to recover the filing fee from the landlord for the cost of this Application.

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

An Order of possession was not required as the tenant has moved out. The tenant's Application does not indicate the tenant is seeking double his deposit paid; however, that claim was included in the tenant's evidence. I will refer to the deposit in the decision.

### Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent?

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

Is the tenant entitled to compensation for damage or loss?

Is either party entitled to filing fee costs?

### Background and Evidence

This fixed term tenancy commenced on January 1, 2009 and was to end by mutual agreement on January 31, 2010. The tenant moved out on February 28, 2010. A security and pet deposit totalling \$1,300.00 was paid on December 27, 2008 and was applied against December 2009 rent owed. A move-in and move-out condition inspection was not completed.

The parties agreed to the following facts:

- on December 16, 2009 a mutual agreement to end the tenancy was signed;
- the tenancy was to end on January 31, 2010;
- the tenant did not have to pay January rent if he moved out on January 31, 2010;
- if the tenant did not move out on January 31, 2010 the tenant would owe January rent as a penalty;
- that December 2009 rent had been paid by retention of the deposit, agreed to, in writing, by the landlord;
- that the mutual agreement to end the tenancy had included a term which indicated that the unit should be inspected by both parties and that the tenant would have to agree to pay for any damages incurred during the tenancy; this term was deleted and initialed by each party; and
- that the tenant would pay \$215.81 for utilities owed to the end of November 2009.

The tenant claimed compensation for damages or loss in the sum of \$300.00 per month plus \$15.00 per month interest, for the term of the tenancy, totaling \$3,780.00 plus return of double the deposit paid. However, during the hearing the tenant confirmed that he agreed to allow his deposit be applied as payment for December rent owed.

The landlord expected the tenant to move out as required by their written mutual agreement. The tenant did not move out on January 31, 2010. As a result the landlord had to clean the rental unit and is claiming loss of revenue for the two months following the tenant's move out date of February 28, 2010.

The tenant did not dispute the utility bills that are owed and acknowledged that some garbage was left on the back porch. The tenant denies that the rental unit required cleaning and was upset at the landlord's refusal to complete a move-in condition inspection or pay interest on the deposits used as rent in December.

The tenant claimed that the rental unit was over-priced for the conditions supplied and has claimed compensation in the sum of \$300.00 per month from January 2009 to December 2009 inclusive in the sum of \$3,600.00 plus \$15.00 interest each month; totaling \$3,780.00.

### 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.

In relation to the penalty included in the mutual agreement to end tenancy, I find that that penalty is not unreasonable, as it is the equivalent of the rent that would have been payable by the tenant for the month of January. Even though the landlord referred to this term as a penalty I find that it is not a penalty, but a reasonable amount owed, as the tenant over-held beyond the mutually agreed upon move-out date. Therefore, I find that the landlord is entitled to unpaid January rent in the sum of \$1,300.00.

I find that the landlord is entitled to unpaid February rent, as the tenant did not move out until February 28, 2010, and failed to pay rent in February.

Other than a claim for garbage removal, which has been acknowledged by the tenant; the landlord has not provided any evidence of the state of the rental unit at the start of the tenancy, nor was a move-out condition inspection completed with the tenant. Based upon the disputed testimony and the absence of a preponderance of evidence that the tenant caused such extensive damage so as to require the unit to be vacant for 2 months; I dismiss the landlord's claim for loss of March and April, 2010, rent revenue.

The tenant did not dispute the amount owed for utilities and I find, based upon the testimony and the utility bills submitted as evidence, that the landlord is entitled to compensation in the sum of \$701.72 from December 10, 2009 to February 28, 2010, inclusive.

The landlord has submitted a quote for carpet installation and garbage disposal. Residential Tenancy Branch policy suggests a useful life for carpet of 10 years and I find that this is a reasonable expectation. As the carpets in the rental unit are at least 10 years old and, in the absence of any evidence before me that the tenant damaged the carpets through negligence, I dismiss the claim for carpet replacement.

The tenant has acknowledged leaving garbage on the back porch and I find that the landlord is entitled to a nominal amount in the sum of \$80.00 for removal of the

garbage. The landlord has not provided any evidence supporting costs incurred for garbage removal; therefore, I based my decision on the tenant's acknowledgement.

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

	Claimed	Accepted
Unpaid February 2010 rent	1,300.00	1,300.00
Loss of March and April 2010 rent revenue	2,600.00	0
Utilities from December 10, 2009 to February 28, 2010	701.72	701.72
Carpet replacement – 10 years old	1,800.00	0
Removal of garbage	400.00	80.00
	8,101.72	3,381.72

In relation to the tenant's claim for return of double the deposit plus interest; the deposit has been applied to December rent owed, with the tenant's permission. Therefore, the claim for return of double the deposit is dismissed. The deposit has not accrued any interest during this period of time.

I find that the tenant's claim for compensation due to the state of the rental unit is not supported by any evidence that the tenant attempted, as required by section 7 of the Act, to mitigate his claimed loss. There is no evidence before me of the condition of the rental unit at the start of the tenancy, nor any evidence of efforts made by the tenant to address concerns he had, early in the tenancy. To claim compensation for the complete term of the tenancy, without any evidence to support the claim or efforts made to mitigate the claimed loss, I find that the tenant has failed to provide any basis for the claim and therefore; I find that the claim is dismissed.

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.

As the tenant's claim does not have merit I decline filing fee costs to the tenant.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$3,431.72, which is comprised of \$3,381.72 in unpaid rent and compensation and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of **\$3,431.72**. 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.

The tenant's claim is dismissed. The tenant is not entitled to filing fee costs.

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 29, 2010.

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Dispute Resolution Officer