



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNR, MNSD, MNDC, FF

### Introduction

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, to retain the security deposit in partial satisfaction of the claim for compensation for damage or loss 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.

### Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent?

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

Is the landlord entitled to compensation for damages or loss?

Is the landlord entitled to filing fee costs?

### Background and Evidence

This one year fixed term tenancy commenced on May 1, 2009, rent was \$1,500.00 per month due on the first day of the month. A deposit in the sum of \$750.00 was paid on April 4, 2009. The tenancy agreement included a liquidated damages clause in the sum of \$424.50 to cover the costs of re-renting the unit should the tenant end the fixed-term before the end of the term.

The landlord is claiming the following:

October rent	1,500.00
Loss of income, difference in rent 110.00/month for 5 months	550.00
Carpet cleaning	85.00
Cleaning costs	315.00
Liquidated damages	424.50
	4,374.50

The tenant had roommates, named as occupants on the tenancy agreement, that were causing him some problems and this resulted in the tenant becoming unsure as to whether he would remain in the unit or be able to find a solution so he could stay. By mid-October the tenant confirmed that he would not be moving back into the rental unit. The tenant stated that he had moved out by September 24, 2009 and that the remaining occupants had moved out by October 5, 2009. The landlord did not establish that the unit was vacant until mid-October, as the tenant had not returned to the unit. The tenant did not provide any written notice that he was ending the tenancy.

On November 26, 2009 the tenant met with the landlord and gave her his written forwarding address. The landlord applied for dispute resolution on December 2, 2009, claiming against the deposit.

The tenant gave the landlord 3 contact names for possible renters, the landlord stated that these individuals changed their minds and were not interested in the rental unit. The property owner directed the agent to attempt to come to a solution with the tenant to reduce the costs, but the tenant had responded that he did not have the means to pay any costs. The tenant had offered to relinquish his deposit as liquidated damages, but the landlord had declined that offer.

The landlord stated that by the end of October they reduced the rent by \$110.00 per month, to \$1,390.00. On November 18, 2009, new tenants signed a tenancy agreement commencing December 1, 2009. The landlord is claiming the difference in rent obtained effective December 1, 2009, vs. the rent included in the tenant's agreement, as a loss of revenue from December 2009 to April 2010 inclusive in the sum of \$550.00. The landlord stated that the rental market had become less competitive and that they

lowered the rent so applicants could be attracted, at the risk of having the unit remain vacant.

The parties agreed that at the start of the tenancy the tenant had been offered \$60.00 to complete some required cleaning. The tenant stated that he moved in after the rental had been sold and that the previous owners had not cleaned the unit. There was no evidence of a move-in or move-out condition inspection having been completed. The parties agreed that at the end of the tenancy the tenant had completed some cleaning and, upon the request of the landlord, had returned to carry out further cleaning. The landlord stated the unit had been spotless at the start of the tenancy. The landlord provided a receipt dated November 25, 2009 for fifteen hours of cleaning in the sum of \$315.00.

Clause 23 of the tenancy agreement required the tenant to have the carpets cleaned at the end of the tenancy; however this did not occur.

An attempt to settle this matter during the hearing could not proceed as the agent did not have the authority to negotiate on behalf of the property owner.

### 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 claim for October rent, I find, that as the tenant's occupants continued to possess the rental unit into the month of October, that the landlord is entitled to unpaid rent for the month of October. I also base this decision on section 45 of the Act, which determines a tenant may not give notice ending a fixed term tenancy unless the end date is the date contained in the tenancy agreement.

The tenant moved out of the rental unit before the end date of the fixed term tenancy, in breach of section 45 of the Act. Even though the tenant made some efforts to assist the landlord in locating new tenants, the tenant was responsible for payment of the fixed term rent. The landlord attempted to mitigate their loss, as required by section 7 of the Act, and lowered the rent which attracted suitable tenants. Therefore, I find that the tenant is responsible for the loss of rent revenue from December 2009 to April 2010, inclusive in the sum of \$550.00.

As there is no evidence before me of the state of the rental unit at the start of the tenancy and, based upon the testimony that the tenant did make efforts at the end of the tenancy to clean the rental unit I find, on the balance of probabilities, that the rental

unit was left in a reasonably clean state and I dismiss the portion of the application requesting cleaning costs. Section 32 of the Act requires a tenant to maintain a rental unit in a state of reasonable cleanliness and there is no evidence before me that this was not case. A landlord may wish to have a unit left in a spotless condition; however, this is not a requirement of the Act.

In the absence of evidence to the contrary, I find that the tenant failed to have the carpets cleaned at the end of the tenancy and that the landlord is entitled to carpet cleaning costs that are supported by the receipt.

As the tenant signed a tenancy agreement which included a term imposing what I find to be reasonable liquidated damages, I find that the landlord is entitled to damages imposed as a result of the tenant's breach of the fixed term tenancy and the costs related to locating new tenants.

	Claimed	Accepted
Loss of November rent revenue	1,500.00	1,500.00
Loss of rent revenue, difference in rent 110.00/month for 5 months	550.00	550.00
Carpet cleaning	85.00	85.00
Cleaning costs	315.00	0
Liquidated damages	424.50	424.50
	4,374.50	4,059.50

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

The landlord is holding a deposit in the sum of \$750.00 and I find the landlord is entitled to retain this amount in partial satisfaction of the claim for compensation.

### Conclusion

I find that the landlord established a monetary claim, in the amount of \$4,109.50, which is comprised of unpaid rent, loss of rent revenue, carpet cleaning, liquidated damages plus \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The balance of the landlord's claim is dismissed.

The landlord will retain the deposit in the sum of \$750.00 in partial satisfaction of the claim for compensation. Based on these determinations I grant the landlord a monetary Order for the balance of **\$3,359.50**. 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.

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: April 07, 2010.

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Dispute Resolution Officer