



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MND, MNSD, MNR, MNSD, FF

### **Introduction**

This is the Landlord's application for a Monetary Order for unpaid rent, damage to the rental unit and for compensation for damage or loss; to apply the security deposit towards satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

This matter was originally heard on August 10, 2010, via teleconference. The allotted time had expired before the Tenant could provide all of her testimony, and therefore the Hearing was reconvened on August 24, 2010. An Interim Decision was provided on August 11, 2010, which contained the Landlord's initial submissions.

All parties gave affirmed testimony at the Hearings.

### **Issues to be Determined**

- Is the Landlord entitled to a monetary award against the Tenant for loss of rent for the months of March and April, 2010, in the amount of \$3,500.00;
- Is the Landlord entitled to a monetary order against the Tenant for compensation for damage or loss, and if so, in what amount?

### **Background and Evidence**

The Landlord entered a copy of the tenancy agreement in evidence. The tenancy started on March 1, 2009. Monthly rent was \$1,750.00, due on the first day of each

month. The tenancy agreement was for a term of one year, ending March 1, 2010, after which time the tenancy could continue on a month-to-month basis, or a new lease could be entered into. The Tenant paid a security deposit in the amount of \$875.00 at the beginning of the tenancy.

The Tenant gave the following testimony

The Tenant testified that she did not abandon the rental unit after the flood. She testified that the Landlord forced her out of the rental unit without providing the Tenant with a Notice to End Tenancy, and therefore she should not be held responsible for the Landlord's costs in removing and storing her personal property. The Tenant testified that she asked the Landlord to return her personal property in March, 2010, including her personal identification and medications, and the Landlord refused to do so.

The Tenant testified that she signed the tenancy agreement with the Landlord and provided him with post dated cheques for the term of the tenancy, but had no further contact with the Landlord. The Tenant stated that she did not dispute the fact that the Landlord had to remediate the rental unit after the flood, but that she was not responsible for the flood and should not be held responsible for the cost of remediation. The Tenant stated that another tenant (the "other tenant") was responsible for the flood and that she didn't know about the grow op in the rental unit.

The Tenant's witness MB gave the following testimony:

The witness is the Tenant's former lawyer. He first made contact with the Landlord on March 8, 2010, requesting return of the Tenant's property. The witness requested a summary of the Landlord's expenses. The witness provided the Landlord with the Tenant's written authorization to release the information on March 8, 2010.

The witness called the Landlord again on March 12 and 15, 2010, and left messages on an answering machine. The Landlord did not call the witness back.

The witness called the Landlord again on March 17, 2010, and spoke to the Landlord who indicated that he had not received the Tenant's written authorization to release information to the witness. The witness sent the authorization to the Landlord again.

The witness and the Landlord had a difficult telephone conversation on April 8, 2010. The witness was attempting to get the Tenant's belongings back and the Landlord wanted compensation. The witness recalled the Landlord being upset and argumentative and insisting that the Tenant pay for all damages before he would release her personal belongings. The witness had no specific recollection about asking for the Tenant's personal ID or medications.

The witness was acting for the Tenant only and not for the other tenant.

The Tenant's witness RS ("RS") gave the following testimony:

The witness is the other tenant and used to be the Tenant's boyfriend.

At the time of the flood, the Tenant was working in Alberta and living in Alberta and maintained a residence in Alberta as well as at the rental unit. RS only allowed the Tenant to see what he wanted her to see when she stayed at the rental unit. He did not allow her access to the master bedroom or the master bedroom bathroom.

RS went to the Landlord's store on or about February 17, 2010, and paid the Landlord March's rent in cash. The Landlord grabbed the cash and called 911.

On the day of the flood, February 17, 2010, RS went to stay at his relatives. RS wanted possession of his property and in particular his ID and medication, but the Landlord told him he would not return it until RS paid the Landlord \$100,000.00

RS hired an attorney, who contacted the Landlord, but the Landlord was hostile. The Tenant's witness MB was his lawyer and has been since February 18, 2010.

The Landlord gave the following reply and documentary evidence:

The RCMP were investigating the grow op at the rental unit for 2 days following the flood. The door to the rental unit had been broken by the fire department on the day of the flood and the Landlord had to secure the property. The Landlord was required to remove the Tenant's furniture and belongings in order for the remediation to take place. The Landlord did not know where the Tenant went on February 17, 2010, and did not hear from her until he got a letter from the Tenant's witness MB on March 17, 2010.

The bank returned the Tenant's rent cheque for March, 2010, because it could not be negotiated. RS did not pay March's rent in cash. The RCMP ordered RS to have no contact with the Landlord. When RS attempted to contact him, he called the RCMP and the police apprehended RS.

The Landlord denied telling RS that he had to provide \$100,000.00 to the Landlord before he would release the Tenant's belongings.

The Landlord posted two Notices to End Tenancy on the Tenant's door: a One Month Notice to end tenancy for Cause issued February 25, 2010; and 10 Day Notice to End Tenancy for Unpaid Rent issued March 5, 2010.

On May 20, 2010, the Landlord posted a Notice in a local newspaper advising the Tenant that he would dispose of the Tenant's belongings unless she took possession of the property, established a right to possession of it, or made an application to the Court to establish such a right within 30 days from the date of the Notice in the newspaper.

**Analysis**

Based on the testimony and documentary evidence provided by both parties, I find that the Tenant was a “tenant” of the Landlord’s. She entered into a fixed tenancy agreement with the Landlord which began on March 1, 2009 and was to end on March 1, 2010. The Tenant provided the Landlord with post-dated cheques for the term of the tenancy.

I find that RS was not a tenant as defined by the Act. He did not pay rent to the Landlord, did not sign the tenancy agreement and had no tenancy relationship with the Landlord.

I do not accept RS’s testimony that the Tenant was not aware that there was a grow op in the rental unit. Photographic evidence shows that the rental unit was modified to accommodate the grow op by cutting into walls, floors and doors and inserting venting material. There are garbage bags full of leafy material. I find on the balance of probabilities that the leafy material is marijuana and that the Tenant was willfully blind to the grow operation in the rental unit. The amount of marijuana photographed would emit a strong odor that would most likely have been detected throughout the rental unit. In any event, a tenant is responsible for damages caused by the actions of other occupants or her guests, whether or not the tenant is aware of what those actions are.

RS testified that the Tenant’s witness MB was his lawyer. The Tenant’s witness MB testified that he did not act for RS.

Having found RS’s testimony lacks credibility with respect to the above, I do not accept RS’s testimony that he paid the Tenant’s rent for March in cash.

The Condition Inspection Report provided in evidence was also signed by the Tenant, and indicates that the rental unit was brand new when the Tenant took possession.

Based on the Landlord’s testimony and supporting documentary evidence, I find that the Tenant, or a person allowed on the rental property by the Tenant, caused damage to

the rental unit as a result of an illegal marijuana grow operation, and that the Landlord was not able to re-rent the unit until after April, 2010.

The Landlord has established his claim against the Tenant for unpaid rent and loss of rent for the months of March and April, 2010, in the amount of \$3,500.00.

During the Hearing, the Tenant's counsel requested that I make an order that the Landlord return the Tenant's belongings. This Hearing was convened to hear the Landlord's application. The Tenant has not filed an Application for Dispute Resolution with respect to her personal belongings and I decline to make that order.

Based on the circumstances surrounding the Tenant's flight from the rental unit, I find it was reasonable for the Landlord to assume that the Tenant would not be returning to the rental unit. With respect to the Landlord's claim for compensation arising out of the removal and storage of the Tenant's personal belongings, the Landlord must comply with Section 5 of the Regulations. A copy of Part 5 of the Regulations accompanies this Decision.

Based on the testimony, photographic evidence and invoices provided by the Landlord, I am satisfied that the Landlord has proven his monetary claim in compensation for damage to the rental unit, as follows:

Cost of removing and disposing of hazardous material, chemical containers, dirt, roots and electrical equipment, and cleaning the rental	\$2,835.00
Cost of the City Inspection	\$400.00
Service costs for the RCMP	\$1,120.00
Service costs for the Fire Department	\$1,440.00
City Occupancy Permit	\$250.00
Insurance deductible charged back to the Landlord by the Strata Council	<u>\$5,000.00</u>
	\$11,045.00

The Landlord has been successful in his application and is entitled to recover the cost of the filing fee from the Tenant.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of his monetary award.

I hereby provide the Landlord with a Monetary Order against the Tenant, calculated as follows:

Unpaid rent and loss of rent:	\$3,500.00
Compensation for damage to the rental unit	\$11,045.00
Recovery of the filing fee	\$100.00
Less set off of security deposit	<u>-\$875.00</u>
TOTAL	\$13,770.00

### **Conclusion**

I hereby grant the Landlord a Monetary Order in the amount of \$13,770.00 against the Tenant. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) 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: August 31, 2010.

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Dispute Resolution Officer