



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MND, MNSD, & FF

### Introduction

This hearing dealt with an application by the landlord seeking compensation related to loss of rent, liquidated damages due to breach of tenancy agreement, and costs related to cleaning and repairing the rental unit at the end of the tenancy.

The landlord provided affirmed oral testimony at the hearing and submitted documentary evidence in support of this application. The landlord testified that the tenants were served with notice of this application and hearing by registered mail on June 21, 2010 and with copies of the documentary evidence on October 25, 2010.

Although the landlord did not provide a copy of the registered mail receipts, the landlord testified that one package containing the landlord's application and notice of hearing had been received. The other registered packages have not been claimed. The landlord sent all the documents to an address which the tenants provided at the end of the tenancy.

Based on the documentary evidence provided by the landlord, I am satisfied that the tenant was served with notice of this proceeding by registered mail and I deem that the tenant received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*.

I proceeded with the hearing in the tenants' absence.

### Issues(s) to be Decided

Did the tenants' breach the tenancy agreement and *Act* by failing to return the rental unit to the landlord in clean and undamaged condition?

Did the tenants breach a fixed term tenancy?

Did the tenants fail to give proper notice under the *Act* when ending the fixed term tenancy?

### Background and Evidence

The parties entered into a fixed term tenancy beginning February 1, 2010 and ending on July 31, 2010. The monthly rent was \$1,350.00 and a security deposit of \$625.00 was paid on January 11, 2010. On June 7, 2010 the landlord received the tenants' written notice ending the tenancy immediately. The tenants vacated the rental unit by June 8, 2010. Although the tenants completed some additional cleaning at the landlord's request, the tenants did not participate in the final move out condition inspection and did not return the keys to the rental unit.

The landlord is seeking the following claim in damages due to the tenants' breach of the tenancy agreement:

Loss of rent for June 2010	\$1,350.00
Late payment of rent fees for May and June 2010	\$40.00
Liquidated damages for breach of fixed term tenancy agreement	\$300.00
Cost to clean the carpets	\$140.00
Cost to clean the blinds	\$50.00
Cost to repair significant damage to walls in stairwell, including new paint and materials (\$375.00 and \$80.00)	\$455.00
Replacement of keys to rental unit	\$25.00
Recovery of filing fee paid for this application	\$50.00
<b>TOTAL</b>	<b>\$3,760.00</b>

In support of this application the landlord provided copies of the tenancy agreement, a ledger demonstrating the outstanding account owed by the tenants, copies of the move in and move out condition inspection reports and receipts from the caretaker for the work completed on the rental unit.

The landlord described the damage to the stairwell walls in the rental unit. The landlord stated that they were deeply gouged and scratched, likely from the tenants moving

furniture. With respect to the liquidated damages, late fees, carpet and blind cleaning costs the landlord referred to the tenancy agreement. These costs and fees were all agreed to by the parties when the tenancy agreement was signed.

The landlord stated that once notice was received from the tenants they immediately attempted to rent the unit; however, it is a slow time for rental units and they still have 5 vacancies in the building. The landlord did not find a new tenant prior to July 1, 2010 and submit that the tenants are responsible for this loss as they signed a fixed term lease to the end of July 2010.

The landlord seeks to retain the tenants' security deposit plus interest in partial satisfaction of this claim.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First, proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I am satisfied that the landlord has established all four grounds to support this monetary claim. All the damages claimed are a result of the tenants' breach of the fixed term tenancy and due to the tenants' failure to return the rental unit in a clean and undamaged condition, less normal wear and tear, at the end of the tenancy. I am satisfied that the landlord took reasonable steps to mitigate their loss.

I find that the landlord has established a total monetary claim for the sum of **\$3,760.00** including recovery of the \$50.00 filing fee paid for this application. From this sum I Order that the landlord may retain the tenants' security deposit of \$675.00 in partial satisfaction of this claim. There is a remaining balance owed of **\$3,085.00**.

Conclusion

I find that the landlord has established a monetary claim due to breach of the tenancy agreement by the tenants for the sum of **\$3,085.00**. This Order may be served on the tenants. This Order may be 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: November 15, 2010.

---

Dispute Resolution Officer