



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for damages to the rental unit or property and for damage or loss under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

On August 9, 2010, the Landlord was granted an Order permitting him to serve the Application and Notice of Hearing (the "hearing package") on the Tenant by delivering it by regular mail to the Tenant's work place. The Landlord said he served the hearing package to the Tenant at his work place on August 17, 2010 by regular mail and as a result, I find that the Tenant was properly served with the Landlord's hearing package as required by s. 89 of the Act. The Landlord said he also served the Tenant with a copy of his amended Application (which includes a claim to recover a payment to the Tenant for painting the rental unit and for private investigator expenses) on November 9, 2010. The Landlord admitted that he did not confirm if this was still the Tenant's place of employment and in any event, I find that the Order for Substituted Service granted on August 9, 2010 did not authorize the Landlord to serve a subsequent, amended hearing package by this method. Consequently, I find that the Tenant was not properly served with the Landlord's amended hearing package and the claims contained in it are dismissed with leave to reapply.

At the beginning of the hearing, the counsel for the owner of the rental property sought to amend the Application as he claimed the named Landlord is the former property manager for the owner. In the circumstances, I find that there is no prejudice to the Parties in amending the application to include the name of the owner and it is accordingly amended.

### Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?



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## Background and Evidence

This fixed term tenancy started on August 1, 2009 and was to expire on July 31, 2010. In a previous proceedings between these parties heard on June 14, 2010, a finding was made that the Tenant moved out on June 2, 2010 without advising the Landlord. Rent was \$1,900.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$950.00 at the beginning of the tenancy.

The Landlord said the Tenant did not pay rent for October, November and December 2009 and February, April, May and June 2010. The Landlord also said the Tenant has rent arrears for March 2010 of \$400.00. The Landlord further claimed that he lost rental income for part of June and all of July 2010 in part because the Tenant left the rental unit in a damaged condition (ie. improperly painted). The Landlord said the rental unit was re-rented for August 2010.

The Landlord claimed that at the end of the tenancy, the Tenant left the yard of the rental property unmaintained and it took one person a day and a half to remove the Tenant's abandoned articles and to fix up the yard (ie. cut grass, weed, re-seed, etc.)

## Analysis

In the absence of any evidence from the Tenant to the contrary, I find that the Landlord is entitled to recover unpaid rent of \$11,800.00 for October, November and December 2009 as well as for February to May 2010. I also find that the Landlord is entitled to 2 days of unpaid rent for June 2010 in the prorated amount of \$126.67. I further find that the Landlord is entitled to recover 3 late payment fees of \$25.00 each for the Tenant's NSF cheques relating to rent for October, November and December 2009 pursuant to a term of the Parties' tenancy agreement to that effect.

The Landlord said the Tenant was served with a 10 Day Notice to End Tenancy prior to the end of the tenancy. RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. Consequently, the earliest the Tenant could have ended the tenancy would have been July 31, 2010. As a result, the Landlord is entitled to recover loss of rental income for the period, June 3 – July 31, 2010.



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Section 7(2) of the Act also states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. The Landlord said he tried to re-rent the rental unit as soon as he knew the Tenant had vacated and was able to find a new Tenant who took possession on August 1, 2010. In the circumstances, I find that the Landlord has mitigated his damages and I award him \$3,673.33 for lost rental income.

The Parties' tenancy agreement also contains a term that the Tenant will "keep the flower beds, gardens and lawns on [the rental property] cultivated and maintained." In the absence of any evidence from the Tenant to the contrary, I find that the Tenant did not maintain the grounds of the rental property and left them in a poor state at the end of the tenancy. Consequently, I find that the Landlord is entitled to recover \$300.00 for yard clean up expenses. As the Landlord has been successful in this matter I also find that he is entitled pursuant to s. 72 of the Act to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of the damage award. The Landlord will receive a monetary order for the balance owing as follows:

Unpaid Rent:	\$11,926.67
Loss of Rental Income:	\$3,673.33
Yard clean up:	\$300.00
Late Payment fees:	\$75.00
Filing fee:	<u>\$100.00</u>
Subtotal:	\$16,075.00
Less: Security deposit:	<u>(\$950.00)</u>
Balance owing:	\$15,125.00

## Conclusion

A Monetary Order in the amount of **\$15,125.00** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Supreme Court of British Columbia 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 22, 2010.

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Dispute Resolution Officer