



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order to keep the damage deposit; for money owed or compensation for damage or loss under the Act; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They presented oral evidence and confirmed receipt of the material they intended to submit at the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and for what amount?

### Background and Evidence

The rental unit consists of an apartment in a multi unit complex located in Vancouver. Pursuant to a written agreement, the fixed term tenancy was based on a one year lease starting on September 22<sup>nd</sup>, 2010 and ending on September 30<sup>th</sup>, 2011, at a rate of \$1300.00 payable on the first of each month. The tenants paid a security deposit in the amount of \$650.00.

The landlord provided written submissions in which she states that on September 1<sup>st</sup>, 2010 the tenants notified her by email that they would not move into the unit. The landlord stated that the tenants put a stop payment on cheques they had written for the security deposit, and for the months of September and October 2010.

The landlord testified that she re-posted the suite on Craigslist, that she found another tenant, and that a new tenancy started on October 1<sup>st</sup>, 2010.

The landlord said that the tenant broke the lease and is making the following claim:

- Unpaid rent from September 22<sup>nd</sup> to October 1<sup>st</sup>, 2010:     \$ 390.00
- Loss of the security deposit:                                     \$ 650.00
- Filing fee:   \$ 50.00
- Mailing fees:   \$ 50.00
- Total:   \$1140.00

The tenant argued two major points: that the landlord delayed reposting the suite; and that the landlord increased the rent to \$1350.00, which could have impacted the timeliness of finding a new tenant. The landlord argued that she increased the rent by \$50.00 because she was providing an additional parking stall.

### Analysis

Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. The landlord received notice by email on September 1<sup>st</sup>, was hand delivered the same notice on September 2<sup>nd</sup>, and placed a new ad on September 3<sup>rd</sup>. I find that the landlord was in no way tardy in re-advertising. I also accept that a \$50.00 increase would not significantly impact the prospects of new tenants, which is evidenced by the fact that a new tenancy started on October 1<sup>st</sup>. I am satisfied that the tenant mitigated her loss in this matter.

The tenants agreed that they broke a signed lease agreement. Based on the available evidence, I find that the landlord is entitled to recover the portion of the month in September as specified in the lease agreement, which she lost until a new tenancy started on October 1<sup>st</sup>.

There is no provision under the Act whereby a landlord is entitled to impose a penalty for breaking a lease. While the landlord may have referred to a liquidated damages provision under her lease agreement, her monetary claim does not include any specific amount in that regard. Further, the evidence failed to establish that there were liquidated damages associated with the breaking of this agreement.

There is no provision for a party to make a claim under the Act for the cost of registered mail related to an application for dispute resolution. Regarding the landlord's claim for the security deposit; there is no provision in this matter entitling the landlord to keep the security deposit..

The landlord has established a claim for a loss of rent in the sum of \$390.00. Since she was partially successful, I award her a portion of the filing for \$25.00.

#### Conclusion

Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order for the sum of \$415.00.

If necessary, this Order may be registered in the 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: January 21, 2011.

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Residential Tenancy Branch