



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for damage to the unit, site or property, for compensation for loss or damage 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.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on October 21, 2010. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is there a loss or damage to the Landlord and if so how much?
3. Is there damage to the unit, site or property and if so how much?
4. Is the Landlord entitled to compensation for unpaid rent and for loss or damage and if so how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on October 1, 2008 as a month to month tenancy. Rent was \$820.00 per month and \$10.00 for parking payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$410.00 on September 17, 2008. The Landlord said the tenancy ended on December 31, 2008 as the Tenant abandoned the unit sometime in December, 2008.

The Landlord said that the Tenant did not pay \$830.00 of rent for December, 2008 and abandoned the rental unit sometime before December 9, 2008. The Landlord said they inspected the property on December 9, 2010 as a result of a notice to the Tenant for an inspection to determine if the unit needed painting. The Landlord said they found the unit abandon. The Tenant left some pieces of furniture and garbage in the unit.

The Landlord continued to say that they had difficulty contacting the Tenant until October 6, 2010 at which time the Tenant said he would not pay the rent or damages to the Landlord. The Landlord said her application is to recover the December, 2008 rent of \$820.00, the parking fee of \$10.00 and a late rent payment fee of \$25.00. As well the Landlord is seeking cleaning costs of the carpet of \$78.75 and dry cleaning costs for the drapes of \$87.15 as the Tenant was a heavy smoker, which resulted in the unit having a heavy smoke smell. The Landlord said the Tenant had not cleaned the drapes and carpet prior to vacating the unit. In addition the Landlord said she had trash removal costs of \$131.25 to remove the furniture and garbage that the Tenant left in the abandoned unit.

### Analysis

Section 26 of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant did not have the right under the Act to withhold part or all of the rent for December, 2008. I find in favour of the Landlord for the unpaid rent of \$820.00 for December, 2008, the parking fee of \$10.00 and the late rent fee of \$25.00. The parking fee and the late payment fee are both written into the tenancy agreement which was signed by the Landlord and Tenant on September 17, 2008.

Section 37 (2)(a) of the Act says that when a tenant vacates a unit the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

I find from the Landlord's testimony that the unit had an excessive smoke smell that was beyond normal wear and tear and therefore I find the Landlord has established grounds to claim the cleaning fees for the carpet of \$78.75 and the drapes of \$87.15. In addition I grant the Landlord the removal costs of \$131.25 for the removal of abandoned furniture and other items that the Tenant left in the unit after the Tenant abandoned the unit.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

Rent, parking and late fee arrears:	\$	855.00
Cleaning costs	\$	165.90
Removal cost	\$	131.25
Recover filing fee	\$	50.00
Subtotal:		\$1,152.15

Less:	Security Deposit	\$ 410.00	
	Accrued Interest	\$ 1.78	
	Subtotal:		\$ 411.78
	Balance Owing		\$ 740.37

Conclusion

A Monetary Order in the amount of \$740.37 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

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Residential Tenancy Branch