



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### Dispute Codes

For the tenant – MNSD, O

For the landlord – OPR, MND, MNR, MNSD, MNDC, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The tenants seek to recover their pet damage deposit and other issues. The landlord seeks a Monetary Order to recover unpaid rent, for damage to the rental unit, for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The landlords also seek an Order to keep the tenants security deposit and to recover their filing fee. As the tenants have moved out no Order of Possession is required at will not be dealt with at this hearing.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Are the tenants entitled to recover the pet damage deposit?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the rental unit?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the pet damage deposit?

### Background and Evidence

Both Parties agree that this tenancy started on June 01, 2009. Rent for this unit was \$1,250.00 per month and was due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$650.00 which has been dealt with at a previous hearing. The tenants paid a pet damage deposit of \$250.00 in either August or September, 2009. The parties disagree about the date the tenant moved from the rental unit. The tenant states he moved out on February 06, 2010 and the landlord testifies he moved out on February 22, 2010.

### The tenant's application

The tenant testifies that when his roommate moved into the unit she had a dog and the landlord requested a pet damage deposit. He testifies that his roommate could only afford \$250.00 which was paid for by social services. The tenant testifies he gave the landlord his forwarding address about one month after the tenancy ended. The tenant seeks to recover the sum of \$250.00 from the landlord as the pet deposit was not returned to them.

The landlord agrees that the tenants paid a pet deposit in October 2009. The landlord testifies that she has never received the tenants forwarding address in writing and as the tenant continues to owe money to them which was awarded at a previous hearing she should be allowed to keep the pet deposit as per her application or in partial payment for unpaid rent for February, 2010.

The tenant presented other evidence that was not pertinent to my decision as it had been dealt with at a previous hearing.

The landlords' application

The landlord seeks to recover the sum of \$400.00 for damage to a door and painting however I am not prepared to deal with this section of the landlords claim as it was dealt with at a previous hearing held on January 20, 2010.

The landlord seeks to recover unpaid rent for February 2010. She states she had applied for a loss of income for February, 2010 at her last hearing on January 20, 2010. However, as an Order of Possession was issued to the landlord to take effect two days after service the Dispute Resolution Officer dismissed the application for lost income for February as the tenancy would end at the end of January, 2010. The landlord testifies that the tenant did not move from the rental unit until February 22, 2010 despite the fact that she served him with the Order of Possession on January 25, 2010 and he should have vacated the rental unit on January 27, 2010. The landlord has asked that unpaid rent for February, 2010 be taken into account again as she could not re-rent the unit for February, 2010.

The landlord seeks an Order to keep the pet deposit if she is successful with her claim for February, 2010 rent.

The landlord seeks a Monetary Order to recover the sum of \$145.30 for interest from the date the last Monetary Order was issued as the tenant has failed to pay despite an Order now in place from the Provincial Court of British Columbia.

The tenant disputes the landlords request to recover unpaid rent for February, 2010 as this matter was dealt with at the previous hearing held in January 20, 2010 where the matter was dismissed.

The tenant states he moved out on February 06, 2010 as per the Order of Possession served upon him by the landlord

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords application for damage to the rental unit, as this matter was dealt with at a previous hearing held on January 20, 2010 I dismiss this section of the landlords claim without leave to reapply.

With regard to the landlords claim for unpaid rent for February, 2010; The tenant argues that at the previous hearing held on January 20, 2010 the landlords application for lost income for February, 2010 was dismissed. The landlord argues this was because an Order of Possession should have taken affect before February, 2010. In this instance, I find the landlords' evidence more likely that the tenant did not move from the renal unit until February 22, 2010 as the landlord served him with an Order of Possession and then had to start the enforcement process as the tenant failed to move out two days after the Order of Possession was served. Therefore, it is my decision that the landlord is entitled to recover unpaid rent rather than a loss of income up to February 22, 2010 of \$982.14 pursuant to s. 67 of the *Act*.

With regard to both Parties claim for the pet damage deposit; S. 38 of the *Act* states the landlord has 15 days after either receiving the tenants forwarding address or the end of the tenancy whichever is the later to return the tenants security or pet damage deposit or file an application to keep it. As the tenant has not provided any evidence to show that they gave their forwarding address to the landlord and the landlord disputes receiving it the tenants' application to recover the pet deposit is premature. I further find as the landlord has been successful with his claim for unpaid rent the landlord may deduct the sum the tenants pet deposit of \$250.00 from the rent owed pursuant to s. 38 (4)(b) of the *Act*.

With regard to the landlords claim for interest of \$145.30; there is no provision in the *Act* for interest payable on any previous Orders issued while enforcement action takes place. Therefore, this section of the landlords claim is dismissed.

As the landlord has been partially successful he may recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent from February 01 to February 22, 2010	\$982.14
<b>Subtotal</b>	<b>\$732.14</b>
Plus filing fee	\$50.00
<b>Total amount due to the landlord</b>	<b>\$782.14</b>

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in partial favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$782.14**. The order must be served on the respondent and is enforceable through the Provincial Court 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: February 17, 2011.

---

Residential Tenancy Branch