



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order for damages, unpaid rent or utilities, to keep all or part of the security deposit, money owed or compensation for loss or damage and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

### Background and Evidence

This tenancy began May 1, 2010 with monthly rent of \$1600.00; the tenant paid a security deposit of \$800.00. The tenancy agreement Addendum notes that there is to be no smoking in the rental unit, all utilities are the tenant's responsibility and the tenant will be allowed to house one or two international students.

At the start of this hearing the agent, who is named on the application as a tenant, requested to not be responsible for this action as he is not named on the tenancy agreement. The landlord understood and agreed to make this claim against the tenant only as the agent is not named on the tenancy agreement as a tenant and had acted only as an agent for the tenant. The agent called in at the start of the hearing, participated and then exited at the 27 minute mark.

The landlord testified that on or around September 30, 2010 he noticed a burned mattress in the garage and immediately contacted the tenant to find out what had happened. The landlord stated that he arranged to do an inspection on September 31, 2010 and at that time found the house to be very dirty, the carpets very stained, dirty dishes, garbage and food in the bedrooms and the walls filthy. The landlord stated that

he advised the tenant that the two sub-let tenants had to be provided notice to vacate due to the damage they were causing to the property as the landlord was concerned about the condition and safety of the property.

The landlord stated that on September 29, 2010 he was advised by the tenant's agent that the sublet tenants would be vacating. The landlord maintains that notice was given for the sublet tenants only and that he was never provided notice by the tenant stating that the tenant would also be vacating October 31, 2010. On October 30, 2010 the tenant contacted the landlord and advised the landlord that he could inspect the rental property as he and his sublet tenants were all vacating the rental unit. The landlord completed a walk-through with the tenant on October 31, 2010 at which time the tenant had not completely vacated the rental unit.

The landlord inspected the rental unit on or around November 1, 2010 with the tenant's agent present and during this inspection noted that in addition to the concerns of the September 31, 2010 inspection, two venetian blinds were broken, all most all of the light fixtures broken or damaged, toilet seat broken and discarded furniture and garbage all through-out the property. The landlord maintains that he called the tenant numerous times to come and complete a move-out inspection but that the tenant did not make arrangements to complete one and that he simply left the tenant a copy of the move-out inspection on the counter. The move-out inspection is dated October 31, 2010 but not signed by the tenant or his agent.

The landlord stated that in early November he attempted to contact the tenant's agent numerous times to arrange for removal of the discarded items, discuss the cleaning and damage costs as well as the unpaid utility bills however the tenant's agent refused to address these concerns with the landlord. The landlord in this application is seeking a monetary order for \$3400.00.

Unpaid Utilities	\$675.00
November rent	\$1600.00
Light fixtures	\$275.00
Carpet cleaning	\$250.00
Home cleaning	\$200.00
Painting and labour	\$400.00
<b>Total</b>	<b>\$3400.00</b>

The landlord stated that the tenant had completed landscaping work for the landlord and in exchange for this work the tenant was/would not be charged utilities for the months of May and June 2010.

The landlord in this hearing stated that due to the condition of the property he had made the decision to completely renovate the rental unit and at this time is requesting to amend his application to retain the tenant's \$800.00 security deposit as compensation for damages and request \$675.00 compensation for the unpaid utilities for a total claim of \$1475.00. The landlord attempted to settle with the tenant for the amount of \$1475.00 in this hearing however the tenant refused the request to settle.

The tenant testified that on September 29, 2010 when the landlord was given notice for the two sub-let tenants, the landlord was also provided with notice for the tenant to vacate October 31, 2010.

The tenant did agree that he was with the landlord on October 30, 2010 to do a walk-through of the property but a move-out inspection was not completed at that time. The tenant neither confirmed nor denied that the landlord attempted to contact him by phone to arrange a move-out inspection but stated that as he and his agent were living next door to the rental property the landlord had the ample opportunity to contact them if necessary.

The tenant maintains that the rental unit was in good condition upon vacancy and that there was no damage in the rental unit. The tenant stated that the utilities went unpaid for the entire duration of the tenancy as he had completed work for the landlord and he believed that it was acceptable to not pay the utilities in exchange for the work completed; the tenant does not have a written agreement regarding this.

### Analysis

Based on the documentary evidence and testimony of the parties I am not satisfied that the tenant provided the landlord with proper notice to vacate per Section 45 (1) (a) of the *Act* as neither the tenant or his agent have submitted such a document and in this hearing stated that they no longer have a copy of the notice given in their possession.

I am also not satisfied that the landlord provided the tenant or his agent with two opportunities to complete a move-out inspection per Section 36 (2) of the *Act* as the tenant and his agent were occupying the property next door to the rental unit and the landlord had opportunity to contact them.

Accordingly, I find that the landlord has established entitlement to compensation in the limited amount of \$2142.70, calculated on the basis of \$542.70 for utilities for the months of July 2010 through October 2010, and \$1600.00 for one month's compensation for loss of rental income for the month of November 2010.

I find that the landlord has established a claim for \$2142.70 in unpaid rent and utilities.

As the landlord has some success in his claim the landlord is entitled to recovery of the \$50.00 filing fee.

### Conclusion

I find that the landlord has established a monetary claim for \$2142.70 in unpaid rent, damages and cleaning costs. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$800.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1392.70** ( $\$2142.70 + \$50.00 = \$2192.70 - \$800.00 = \$1392.70$ )

A monetary order in the amount of **\$1392.70** 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 Provincial (Small Claims) 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: March 16, 2011.

---

Residential Tenancy Branch