



# 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 hearing dealt with an application by the landlord for a monetary order for damage to the unit, for unpaid rent, to keep all or part of the security deposit, money owed or compensation for damage or loss 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 one year, fixed term tenancy began August 1, 2010 with monthly rent of \$675.00 and the tenant's paid a security deposit of \$337.50. On December 2, 2010 the landlord served the tenants with a 10 day Notice to End Tenancy for Unpaid Rent.

The landlord testified that on September 19, 2010 they had complaints of excessive noise from the tenant's apartment and the tenant who lives directly below the rental unit called the landlord due to water leaking through her ceiling from the tenant's apartment above. The landlord stated that when they attended the tenant's unit to address the emergency water leak, they found the tenant very intoxicated and confused and water running in the kitchen sink which was overflowing. On October 10, 2010 a written warning notice was issued to the tenant by the landlord for this incident.

The tenant testified that the landlord's version of events was not true, only a small amount of water had been spilled on the floor and water was not overflowing from the kitchen sink.. The tenant stated that the building is very old, moldy and not well sealed and that even a cup of water could run through the cracks and leak into the unit below.

The tenants stated that there were issues with the plumbing not draining and that they had told the landlord about the problems but that nothing had been one.

The landlord testified that on October 21, 2010 they received a complaint about loud music and partying on the tenant's balcony and a call from the head office regarding a flood in the downstairs tenant's apartment. Upon inspection of the downstairs tenant's apartment the landlord discovered water running through the light fixtures in the ceiling from the tenant's apartment above. The landlord stated that the tenants apartment was entered due to the emergency and the landlord found the tenant very intoxicated and asking why the landlord was there. The landlord found that the tenants had again filled the kitchen sink with dishes and rags which had effectively prevented the sink from properly draining, turned the water on and left it running which caused the water to overflow unabated.

The tenant testified that the landlord's version of events was not true, only a small amount of water, maybe 1 litre, had been spilled on the floor and the sink was empty when the landlord came in to the rental unit. The tenant maintains that as the landlord did not come into the rental unit until 6 hours after getting the call from head office and at the time of entry there was no longer an emergency requiring the landlord's attendance, this was an example of the landlord's inappropriate behaviour.

The landlord stated that after this second incident the tenant was advised that they would be responsible for any repair costs and the tenant became upset and aggressive. The landlord stated that the tenant then went and confronted the downstairs neighbour leaving her feeling very concerned for her safety.

The tenants acknowledge that there was a water leak from their suite but that they should not be responsible for the high renovation costs. The tenants maintain that the amount of water leaked, which the tenants refer to as a '*small puddle*', would never have caused enough damage to require \$3000.00 worth of repairs. The landlord stated that the renovation company had blowers in both rental units for 4 days drying out the carpets and ceiling.

The landlord testified that on November 21, 2010 the landlord received complaints from 3 different tenants as the tenant was being excessively loud until 4:00AM and that someone started knocking on the downstairs tenant's windows. On November 30, 2010 the landlord gave the tenants a notice regarding a breach of the tenancy agreement and in response the tenants gave the landlord written notice that they would vacate the end of December 2010.

The tenants did not pay the December 2010 rent and on December 2, 2010 the landlord served the tenants with a 10 day notice to end tenancy for unpaid rent. The landlord attended the tenant's rental unit on December 11, 2010 to find that the tenants had vacated the rental unit, left one set of keys on the counter, did not provide a forwarding address and did were not available to attend a move-out inspection with the landlord.

The tenants stated that they were constantly harassed by the landlord, that the living conditions became unbearable because of the landlord's inappropriate behaviour and that was why the tenants vacated without paying the December rent.

The landlord stated that they had not received any complaints from the tenants regarding the plumbing in the rental unit and that this unit had not had plumbing issues in the past. The landlord stated that her evidence speaks for itself as the landlord has submitted letters of complaint from other tenants regarding these tenants and the cost of renovation after the flood from the tenants apartment.

The landlord in this application is seeking compensation for the following:

December rent	\$675.00
December late fee	\$25.00
Utilities	\$30.00
Suite cleaning	\$100.00
Carpet cleaning	\$72.50
Key replacement	\$20.00
Breach of lease	\$300.00
Restoration for water damage	\$3316.17
<b>Total Costs</b>	<b>\$4538.67</b>

### Analysis

Based on the documentary evidence and testimony I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for unpaid rent, liquidated damages and damage to the rental unit(s).

The landlord has established that the tenants rental unit and the rental unit below the tenants suffered damage from the water leaking from the tenants apartment. While the tenant's maintain that they should not be liable for the renovation costs and that the costs are too high for the amount of work done, the tenants do acknowledge that there were 2 water leaks from their rental unit during the time of their tenancy. The tenants

also admit that they broke the 1 year fixed term tenancy agreement and did not pay the December 2010 rent.

I find that the landlord has established a claim for \$4116.17 in unpaid rent, liquidated damages and damage to the rental unit(s).

The landlord is entitled to recovery of the \$50.00 filing fee.

### Conclusion

I find that the landlord has established a monetary claim for \$4538.67 in unpaid rent and damages. 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 \$337.50 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$4251.17** ( $\$4538.67 + \$50.00 = \$4588.67 - \$337.50 = \$4251.17$ )

A monetary order in the amount of **\$4251.17** 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: June 6, 2011.

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Residential Tenancy Branch