



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant: MNDC, LRE, FF

For the landlord: OPC, OPB, MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The tenant applied for a monetary order for money owed or compensation for damage or loss, an order suspending or setting conditions on the landlord's right to enter the rental unit, and to recover the filing fee for the Application.

The landlord applied for an order of possession for the rental unit, an order to keep all or part of the security deposit and for a monetary order for damage to the rental unit and for money or compensation for damage or loss and to recover the filing fee for the Application.

The landlord and the landlord's agent appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and to make submissions to me.

Despite having his own Application for dispute resolution set for hearing on this date and time, the tenant did not appear for the conference call hearing.

As the applicant/tenant failed to attend to present his claim, and the respondent/landlord appeared and was ready to proceed I dismiss the tenant's application, **without leave to reapply**.

### Preliminary Issue:

The landlord previously filed for dispute resolution seeking an early end to the tenancy pursuant to section 56 of the Residential Tenancy Act (the "Act").

In that hearing on September 30, 2011, the landlord was granted an order of possession and further, the landlord testified that the tenant vacated the rental unit on September 30, 2011, and had paid a security deposit in the amount of \$200.00. Therefore, as the landlord no longer required an order of possession, I have amended the landlord's application excluding this request and the hearing proceeded on the remaining issues mentioned in the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit and to receive a monetary order pursuant to sections 67 and 72 of the Act?

Background and Evidence

The landlord's monetary claim is in the amount of \$1,560.00, comprised of \$235.00 for a replacement umbrella, \$30.00 for re-cleaning the barbeque grill, \$25.00 for re-fill of the propane tank, replacement of 2 deck chairs for \$70.00, \$800.00, for lost rent for October, \$150.00 for cleaning the rental unit, \$50.00 for advertising fee, and rental commission to re-rent the premises for \$200.00. The landlord amended his original claim by excluding a request for \$800.00 for lost rent in November, 2011. The landlord also submitted that a cost of \$25.00 was incurred for one bag of garbage removal and \$30.00 to change the locks.

In support of his application, the landlord's relevant evidence included the tenancy agreement, statements from the landlord's housekeeper, the landlord's agent and property manager, copies of photographs of the barbeque grill, deck, chairs and umbrella and rental unit, and an online listing stating a replacement cost for the umbrella.

The landlord and landlord's agent's relevant testimony indicated that the tenant used the landlord's umbrella without permission, which caused the umbrella to cease working and which necessitated a replacement. The landlord stated the umbrella has not been replaced.

The landlord submitted that the tenant used the barbeque grill without permission and that it required cleaning thereafter. Additionally, the tenant emptied the propane tank and did not replace the propane. No cleaning or propane bill was submitted with the landlord's evidence.

The landlord stated that the deck chairs were damaged by the tenant and needed replacing. No bill was submitted with the landlord's evidence.

The landlord testified that the tenant broke the terms of the fixed term tenancy and that he owed rent for the month of October 2011, in the amount of \$800.00.

The landlord also claimed that due to the tenant's early end of the tenancy, the landlord was entitled to receive advertising and commission fees and expenses. No bill or invoice was submitted by the landlord.

The landlord stated that the tenant left the rental unit dirty and that it required cleaning. No bill or invoice was submitted by the landlord.

### Analysis

Based on the testimony, evidence, and a balance of probabilities, I find as follows:

When making a claim for damage or loss under a tenancy agreement or the *Act*, the party making the allegations, the landlord in this case, has the burden of proving their claim.

Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification or proof of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

I find the tenant was obligated to pay rent on October 1, 2011, under the terms of the tenancy agreement and failed to pay this amount. I therefore find the landlord has established a **monetary claim** in the amount of **\$800.00** for lost rent for October 2011.

While I accept that the tenant caused damage to the rental unit and that the landlord may suffer a potential loss, I find the landlord provided insufficient evidence of his loss incurred or damage to the rental unit caused by the tenant. The landlord failed to submit invoices or bills paid and the testimony supports that as of the day of the hearing, the landlord had yet to suffer costs for damage or loss, failing to meet step 3 of his burden of proof. I therefore **dismiss** his monetary claim for a replacement umbrella, re-cleaning the barbeque grill, for re-fill of the propane tank, replacement of 2 deck chairs, for cleaning the rental unit, for one bag of garbage removal and to change the locks.

However, Residential Tenancy Branch Policy Guideline 16 suggests that a dispute resolution officer may award “nominal damages,” which are a minimal award. These damages may be awarded where the burden of proof of a significant loss has not been met, but they are an affirmation that there has been an infraction of a legal right.

I find the landlord is entitled to an award of nominal damages of **\$100.00** in recognition that the tenant’s actions caused damage to the landlord’s property.

As to the landlord’s claim for advertising and commission fees, I find that the landlord has chosen to incur costs that cannot be assumed by the tenant. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act* and not for costs incurred to conduct a landlord’s business. Therefore, I find that the landlord may not claim advertising and commission fees, as they are costs which are not named by the *Residential Tenancy Act*. I therefore **dismiss** his claim for \$250.00.

Due to a largely successful application, I find that the landlord is entitled to recover the filing fee of \$50.00.

Conclusion

I find that the landlord has established a monetary claim in the amount of **\$950.00**, comprised of lost rent of \$800.00 for October 2011, nominal damages of \$100.00, and the filing fee of \$50.00.

I **order** that the landlord retain the security deposit of \$200.00 in partial satisfaction of the claim and I **grant** the landlord an order under section 67 of the Act for the balance due of **\$750.00**.

The landlord is hereby granted a monetary Order in the amount of **\$650.00**. I am enclosing a monetary order for **\$750.00** with the landlord's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply with this monetary order.

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: October 28, 2011.

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Residential Tenancy Branch