



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the Landlord: MNDC, MNR, MNSD, FF  
For the Tenant: MNDC

### Introduction

This hearing dealt with the Cross Applications of the parties for Dispute Resolution.

The landlord applied for a monetary order for money owed or compensation for damage or loss, for unpaid rent, and authority to retain the tenant's security deposit and to recover the filing fee for the Application.

The tenant applied for a monetary order for money owed or compensation under the Residential Tenancy Act (the "Act") or tenancy agreement.

The hearing process was explained to the parties. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and respond each to the other and make submissions to me.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss, for unpaid rent, authority to retain the tenant's security deposit, and to recover the filing fee for the Application?

Is the tenant entitled to a monetary order for money owed or compensation under the *Residential Tenancy Act (the "Act")*?

### Background and Evidence

I heard testimony that this one year, fixed term tenancy started on March 19, 2011, was to end on March 31, 2012, and ended on or about August 10, 2011, when the tenant vacated the rental unit. Monthly rent was \$2,500.00 and the tenant paid a security deposit of \$1,250.00 on March 5, 2011. The landlord has not returned the tenant's security deposit.

**Landlord's Application:**

The landlord's monetary claim is as follows:

Balance of rent for Lease Agreement	\$19,569.73
Listing fee, newspaper	\$29.12
Filing fee	\$50.00
Less lease for lower unit	(\$4,000.00)
<b>Total</b>	<b>\$15,659.08</b>

The landlord's evidence included a copy of the tenancy agreement, a receipt from a plumber, a receipt from a contractor, dated July 30, 2011, a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), dated August 20, 2011, which was served on the tenant, and copies of utility and home security bills.

The landlord submitted that he is entitled to the lost rent for the remaining months of the fixed term tenancy, due to the tenant's early termination, plus her portion of the utilities and house alarm bill.

Upon query the landlord submitted that he began advertising the rental unit immediately on an internet site, but has had no success so far in re-renting. Additionally, the landlord stated that he placed one ad in a Chinese language newspaper, but had no success. The landlord admitted not renewing the advertisement.

Upon query, the landlord stated he never considered lowering the price on the rental unit.

The landlord stated that he attempted to lessen his economic loss by moving from the lower unit and renting it out, with the tenancy for that unit starting in December 2011, for \$1,000.00 per month. The tenant deducted this amount of monthly rent for the remaining months of the tenant's fixed term to offset against the claimed amount.

The landlord stated although he is not living in the rental unit at the moment, he and his wife will most likely live there at some point in the future.

The landlord submitted proof of payment for the newspaper advertisement for the month of September, as well as one page document of the online listing beginning on August

24, 2011. I note that the document showed three responses, on August 30, September 23 and September 26, 2011.

In response to the tenant's application, the landlord submitted he was told of the leaking skylights in March and immediately had them covered. The landlord stated that he was unable to have someone fix the skylights until late July due to the weather.

The landlord denied that the plumbing was causing the noise problems complained of by the tenant, and had a plumber attend the rental unit on June 22, 2011. The landlord did admit that the pipes, as well as some of the fixtures, were old.

The landlord acknowledged that there was not a move-in or move-out condition inspection report.

### **Tenant's Application:**

The tenant's monetary claim is in the amount of \$3,600.00, which includes reimbursement of August 2011, rent of \$2,500.00 and moving costs of \$1,100.00.

The tenant submitted that she was forced to move from the rental unit early due to the landlord's lack of repair to the rental unit, despite many requests for the same.

The tenant stated that since the beginning of the tenancy, she informed the landlord of the leaking skylights, and that it took 4 months to fix them. The tenant claimed that for 4 months, the skylights were covered by blue tarps and were not fixed until late July, which adversely impacted the enjoyment of the rental unit.

Additionally, the tenant claimed that the plumbing in the rental unit was an issue, as the constantly running water prevented her from sleeping well. The tenant submitted that the pipes created jackhammer noises, adversely impacting the enjoyment of the rental unit. The tenant also submitted that the landlord failed to inform her that the cold water valve, which was located in the lower rental unit, was turned off, causing her to suffer burns. The tenant stated she informed the landlord early in the tenancy of the plumbing issues.

The tenant contended that she was forced to move from the rental unit early, even though she did not want to, as the landlord refused to make the necessary repairs. The tenant testified and submitted evidence that she gave the landlord written notice of termination and a forwarding address on August 10, 2011.

The tenant paid one half of the rent for August, in the amount of \$1,250.00.

### Analysis

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

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim as follows:

**First** proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly** proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

### Landlord's Application

Section 45 (2) of the Residential Tenancy Act requires a tenant to give notice to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

Based on the testimony and evidence and a balance of probabilities, I find that the tenant failed to comply with the Act by providing insufficient notice to the landlord of her intent to vacate, which caused the landlord to incur a loss of rent for August 2011. I therefore find that the landlord has established a **monetary claim** of **\$1,250.00** for loss of revenue for August, 2011 (\$2,500.00 monthly rent less \$1,250.00 paid by the tenant).

As to the landlord's claim to hold the tenant responsible for the remaining months of the fixed term, I find the landlord has failed to meet his burden of proof. In reaching this conclusion, I find the landlord failed to take reasonable measures to mitigate his loss. I find a reasonable measure to include advertising the rental unit for less monthly rent than listed in the tenancy agreement in an attempt to re-rent more quickly.

I find another reasonable measure to include additional advertisement in the Chinese language newspaper. I also find that the landlord has not yet suffered a loss for the remaining months of the fixed term, and therefore has not met step one in his burden of proof.

I therefore **dismiss** his claim for loss of revenue for the remaining months of the tenancy.

Even had I not found that the landlord failed to take reasonable measures to mitigate his loss, I would still have dismissed his claim for September 2011, rent and beyond for his failure to submit proof that the rental unit had been advertised within a reasonable time upon receiving the tenant's notice to vacate or any advertisements beyond the month of September, 2011.

I dismiss the landlord's monetary claim for home security system costs and utilities as I find the landlord failed to establish the tenant was responsible for these costs under the tenancy agreement or Act.

I also find that the landlord failed to convince me that he was not currently living in or planning to live in the rental unit due to the contradiction in his testimony, first stating he probably will not be living in the rental unit and later stating that he and his wife were planning on living there at some point.

In relation to the landlord's claim for advertising fees, registered mail fees and heating costs for the remaining months, 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 fees, registered mail fees or heating costs, as they are costs which are not named by the *Residential Tenancy Act*. I therefore **dismiss** the landlord's claim for advertising fees, registered mail expenses and utility charges.

**Tenant's Application:**

As to the tenant's claim seeking compensation for rent for August 2011, section 26 of the Act states that a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. I find the tenant has not submitted evidence that she had a legal right to withhold rent when she failed to pay the entire month of August, having paid \$1,250.00. I therefore find the tenant is not entitled to be reimbursed the amount of \$1,250.00 she paid or to be paid for the other half of the month. I therefore **dismiss** her claim for reimbursed or compensated rent for **\$2,500.00**.

The landlord is required under section 32 of the Act to provide and maintain the residential property in a state of decoration and repair which complies with health, safety and housing standards required by law.

Where a tenant requests repairs the landlord must be afforded a reasonable amount of time to take sufficient action. Upon a balance of probabilities, I find the landlord was notified by the tenant of the leaking skylights and plumbing issues by the end of March 2011, but did not take sufficient action to timely remedy these issues as I find the landlord failed to have the skylights fixed until the end of July 2011, and the plumbing at the end of June 2011. I find this insufficient response caused the tenant to suffer a loss of use and enjoyment of her rental unit. I accept that the covered skylights diminished the value of the tenancy by \$150.00 per month and the plumbing issues diminished the value by \$150.00 per month. I award the tenant compensation of \$150.00 per month starting April 1, 2011, through July 2011, for the skylight issue for loss of enjoyment of the rental unit and \$150.00 per month, starting April 1, 2011 through June 2011 for loss of enjoyment of the rental unit. Therefore, I award the tenant **compensation** for diminished value of the tenancy in the amount of **\$1,050.00** (\$150.00 for April-July for skylights and \$150.00 for April-June for plumbing).

As to the tenant's claim for a moving fee, these are choices the tenant made and I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant. I therefore **dismiss** the tenant's claim for **\$1,100.00**.

#### Conclusion

#### **Both Applications:**

I decline to award either party recovery of the filing fee.

The landlord has established a monetary claim of **\$1,250.00** for loss of revenue for August 2011.

The tenant has established a monetary claim in the amount of **\$1,050.00** for diminished value of the tenancy.

I have offset the landlord's monetary claim by the amount of the tenant's security deposit of \$1,250.00, which he has retained, and award the tenant a **monetary order** in the amount of **\$1,050.00**.

I am enclosing a monetary order for **\$1,050.00** with the tenant'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 landlord 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: November 18, 2011.

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Residential Tenancy Branch