



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: MNR, MND, MNDC, MNSD and FF  
Tenant: MNDC, RPP, FF and O

### Introduction

These applications were brought by both the landlord and the tenant.

By application dated December 2, 2011, the landlord seeks a Monetary Order for unpaid rent, damage to the rental unit, damage or loss under the legislation or rental agreement, authorization to retain the security deposit in set off against the balance owed and recovery of the filing fee for this proceeding.

By prior application dated November 3, 2011, the tenant sought a Monetary Order for loss or damage under the legislation or rental agreement, return of personal property and recovery of the filing fee for this proceeding.

The tenant's application was the subject of a hearing on November 18, 2011 which was adjourned after 30 minutes due to the volume of evidence requiring a longer hearing, and to permit the landlord an opportunity to file a cross-application to minimize the possibility of off setting Monetary Orders.

In my Interim Decision of November 18, 2011, I found I had not heard sufficient evidence to warrant an order for return of the tenant's property.

Despite having been served with the Notice of Hearing for the present reconvening of his application and that of the landlord, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, having already had his claim for return of property dismissed in my decision of November 18, 2011, the present hearing proceeded on the landlord's application in the absence of the tenant.

Issue(s) to be Decided

This matter now requires confirmation that the landlord was entitled to treat the tenant's good as abandoned under Part 5 of the *Regulations* and whether the landlord is entitled to a Monetary Order for the claims submitted, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

Background and Evidence

As noted in my Interim Decision of November 18, 2011, this tenancy began on August 1, 2010 under a one-year fixed term agreement set to end on July 31, 2011. Rent was \$2,545 and the landlord holds a security deposit of \$1,250. The agreement was for the single male tenant, but at some time during the tenancy he was joined by a female occupant without advice to the landlord.

The tenancy came to an abrupt end on May 25, 2011 when the tenant was arrested at the rental unit after a dramatic attempt to flee via balconies on the 27<sup>th</sup> floor of the rental building. The tenant was held in custody until July 15, 2011 when he was convicted of four counts of fraud (one over \$5,000), breach of recognizance and possession of instruments to forge/falsify credit cards. He was sentenced to one year served in the community and one year probation.

I accept as fact the landlord's submission that legal counsel for the tenant had advised her that, as the tenant had previously been convicted of similar offences, it was highly unlikely that he would be returning to the rental unit.

When the tenant failed to pay the rent due on June 1, 2011, the landlord served him with a 10-day Notice to End Tenancy for unpaid rent by posting on the tenant's door the following day with an end of tenancy date of June 15, 2011. The landlord applied for and was granted an Order of Possession under a direct request proceeding on June 30, 2011. As the tenant had not paid the rent or made application to contest the notice, he was conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, June 15, 2011.

At the urging of the strata corporation out of fear generated among other tenants, the landlord had the locks to the rental unit changed and proceeded to treat the rental unit

as abandoned under regulation 24(2)(b) which permits a landlord to do so when “the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.”

On his release from custody, the tenant approached the landlord to claim his property but did not make payment for moving and storage costs as required under *regulation 26* of the *Act*. There followed attempts by the parties to settle matters but negotiations came to an end when the tenant’s legal counsel resigned from the matter.

The tenant subsequently filed a claim for \$25,000 which was heard at the hearing of November 18, 2011 and which was to conclude with the present hearing which the tenant did not attend. The landlord noted that the tenant’s claims had been grossly exaggerated noting, for example, that an artificial bamboo plant for which the tenant claimed \$2,200 had a price tag on it for \$157.

I further accept the evidence of the landlord that the tenant falsely represented himself to the mother of his female guest and to officials of the hotel/strata as owner or part owner of the rental unit in which he was a tenant, as well as falsely claiming to be a business partner of the landlord’s husband, and that he issued a number of NSF rent cheques..

Those issues, combined with the tenant’s general conduct and his convictions for multiple counts of fraud, strain the credibility of the tenant beyond the breaking point.

### Analysis

The landlord claims and I find as follows

**Replace locks - \$140.00.** I find this expense was encountered by the landlord as a direct consequence of the conduct of the tenant and th claim is allowed in full.

**Moving and storage - \$1,760.43.** During the hearing, I permitted the landlord to amend her application to include storage charges of \$224 per month for each of November and December 2011 bringing the total claim to \$2,208.43 which claim is allowed in full..

**Replace hardware floors - \$10,808.** This claim arises from the allegation that the hardwood flooring in the rental unit had been damaged beyond repair because the female occupant who stayed with the tenant had worn stiletto type-high heeled shoes in the rental unit despite written requests that she desist. The landlord stated flooring experts had advised her that, even though the floor are hardwood and not laminate, the punctures were so deep that sanding them out would expose the concrete sub floor.

The landlord stated that the flooring had not yet been replaced as it would take several months for them to arrive under special order from California. In addition to the cost of the written estimate, the landlord anticipated but does not claim a one-month loss of rent while the floor is replaced.

During attempts to settle matters, the female occupant's mother who lives one floor below the rental unit, offered to pay for the cost of replacing the floor. The landlord has submitted photographic evidence identifying several 10's of heel marks in the floor and a written estimate in support of this claim.

The landlord stated that she had asked the occupant on a number of occasions not to wear the stilettos in the rental unit and submitted a written request to that effect dated 7/04/11. In the absence of evidence to the contrary, this claim is allowed in full.

**Suite and carpet cleaning - \$1,040.** The landlord makes this claim on three persons, herself and family members, working a total of 21.8 person hours at \$50 per hour. While photographic evidence and correspondence to the tenant during the tenancy corroborates the landlord's claim that the rental unit had been abused and was in extreme need of cleaning, I find the hourly rate to be double the norm. Therefore, I am reducing this claim by half and allow \$520.

**Replace two key fobs – \$123.20.** This claim was supported by receipt and necessitated because one had not been returned and the other was returned broken.

**Fairmont Hotel Fraud - \$1,353.48.** On the basis of the landlord's written notice to the tenant on putting charges on her account in December 2010 and January 2011 without her consent, and an initial erroneous claim by the tenant that he had paid the account, I accept the evidence of the landlord that the tenant had fraudulently represented himself as owner of the suite. The landlord submitted a printout of the charges against her account and this claim is allowed in full.

**Shower repair - \$1,135.74.** The landlord has submitted a paid invoice and photographic evidence of the shower fixture having been broken and requiring a replacement part to be ordered from Germany. The claim is allowed.

**Vancouver Sun Advertising - \$263.83.** The expenditure was required by regulation as part of the procedure for dealing with abandoned goods. It is allowed.

**Westcoast Title Search - \$44.80.** This expenditure to conduct a search of the Personal Property Security Registry is also required by regulation and it is allowed in full.

**Rental of Moving Truck - \$65.65.** This expense was necessary to carry the tenant's abandoned goods to storage and it is allowed.

**On Line Court Services - \$32.00.** This expense was incurred as a result of the landlord's evidence gathering and it cannot be reimbursed.

**Unpaid rent/loss of rent - \$5,090.** This claim is for unpaid rent for June and for the loss of rent for July 2011 and is supported by copies of NSF cheques. It is allowed.

**Filing fee - \$100.** As the landlord's application has succeeded, this claim is allowed.

**Less retained security deposit – (\$1,250).** As empowered under section 72 of the *Act*, I hereby authorize and order that the landlord may retain the tenant's security deposit in set off against the balance owed.

Claims for courier service, parking and the filing fee from a previous dispute resolution proceeding were dismissed as discretionary costs of doing business which cannot be assigned to the other party.

Similarly, I have dismissed a claim in punitive damages as the *Act* does not bestow the authority to grant such claims.

**As the landlord is entitled to recover moving and storage costs by disposal of the abandoned property of the tenant now held in storage, the landlord must inform and provide evidence to the court of the amount recovered from the sale of such goods and deduct that amount from the Monetary Order granted with this decision.**

In sum, I find that the tenant owes to the landlord an amount calculated as follows:

Replace locks	\$ 140.00
Replace hardware floors	10,808.00
Suite and carpet cleaning	520.00
Replace two key fobs	123.20
Fairmont Hotel Fraud	1,353.48
Shower repair	1,135.74
Vancouver Sun Advertising	263.83
Westcoast Title Search	44.80
Rental of Moving Truck	65.65
Unpaid rent/loss of rent	5,090.00
Filing fee	100.00
Sub total (Monetary award to landlord)	\$21,853.13
Less retained security deposit (No interest due)	- 1,250.00
<b>TOTAL (Monetary Order after deposit deducted)</b>	<b>\$20,603.13</b>

### Conclusion

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

The finding reported in my interim decision of November 18, 2011 that the landlord acted lawfully in treating the rental unit and the tenant's property as abandoned is confirmed.

The landlord must report revenue gained in the disposition of the tenant's property to the court and set that amount off against the Monetary Order granted herewith.

In addition to authorization to retain the tenant's security deposit in set off against the balance owed, the landlord's copy of this decision is accompanied by a Monetary Order for \$20,603.13, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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: December 13, 2011.

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Residential Tenancy Branch