



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. We encountered problems with the telephone connection with the landlord at the commencement of this hearing. After a number of attempts and disconnections, the tenant was successful in obtaining a telephone line where she could be understood. At that time, she clarified that she was calling long distance from a village in India where telephone communications made it difficult to obtain a stable telephone connection. During the remainder of the hearing and once we were able to obtain a stable telephone conference connection with the tenant, all parties were able to hear one another without difficulty.

The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on November 8, 2011. I am satisfied that the landlord served this package to the tenant in accordance with the *Act*.

The landlord's agent from the property management company (the landlord) testified that a copy of the landlord's written evidence package was sent to the tenant by registered mail at the same address where the dispute resolution hearing package was successfully delivered. The landlord provided the Canada Post Tracking Number to confirm that the evidence package was sent by registered mail on December 30, 2011.

The tenant said that she had not received this evidence package because her address has changed since she received the dispute resolution hearing package. She said that she is now living in India where she is conducting her business. Although she provided a mailing address in India, she said that she would only be remaining at that address for

another two weeks and would be moving elsewhere in India at that time. She provided a Canadian mailing address for her business where she said a copy of this decision could be sent and where documents associated with this hearing and decision could be mailed to her.

Although the tenant had not yet received the landlord's written evidence package, she said that she wanted to proceed without having an opportunity to review that package as she wanted this issue to be concluded through this hearing. She said that the basic facts of her tenancy were not likely in dispute as she freely admitted that she did not occupy the rental premises she committed to rent after she viewed the rental home in person on October 11, 2011. As the tenant clearly stated that her opposition to the landlord's claim did not rely on any written evidence that may have been submitted by the landlord, I proceeded with this hearing. However, I noted that I was doing so with the tenant's agreement that she asked to proceed without having an opportunity to review the landlord's written evidence.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for liquidated damages as set out in the residential tenancy agreement? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

The parties agreed that on August 24, 2011 the tenant signed a one-year fixed term tenancy agreement in which she committed to rent this rental home on a 1.9 acre property from October 1, 2011 until September 30, 2012. The tenant agreed that she did so sight unseen as she was living in Ontario at the time as she and her dogs were planning to move to these premises with another person, her witness at this hearing,. Monthly rent was set at \$1,250.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$625.00 security deposit paid on August 22, 2011.

The tenant and her witness drove across the country to this rental home but did not arrive until October 11, 2011. The tenant did not make her first rent payment due on October 1, 2011. When she reached the rental home, she and the witness were not at all satisfied with the condition of the rental home. They testified that the property management company that rented them this home had misrepresented the condition of the home and the proximity of the home to a nearby road. They testified that the house had not been cleaned and was mouldy. Moss covered the roof, an old boat was stored

on the property, as were two cars. Rather than the remote acreage property they were expecting from the photographs supplied to them when the tenant rented this home, the tenant found the property to be wholly unsuitable for her needs and the needs of her dogs. The tenant gave undisputed oral testimony that the rental agent from the property management company recognized that the house needed cleaning and offered them a rental discount of \$180.00 to enable them to clean this house. The tenant testified it would have taken her a full week to clean the house to the level where she could have considered residing there. Since she was unwilling to sign a move-in condition inspection report that the landlord's agent wished her to sign with many items requiring fixing or cleaning, the tenant said that she declined to accept occupancy of the rental home. She said that she expected that she might lose her security deposit as a result of declining to accept occupancy of the rental house but did not believe that she should be held responsible for two months of unpaid rent and liquidated damages.

The landlord applied for a monetary award of \$1,250.00 for unpaid rent owing for each of October and November 2011. The landlord did not pursue further unpaid rent as the landlord was able to obtain a new tenant as of December 1, 2011 at the same monthly rental amount. The landlord's total requested monetary award included a \$575.00 amount for liquidated damages, an amount described by the landlord as a "lease break fee" as set out in this residential tenancy agreement. She described this liquidated damages fee as a fee that allowed the landlord to recover the costs of advertising for new tenants, cleaning carpets, conducting showings, and compensating the owner of the property for the charges applied by the property management firm to secure new tenants.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Even though the tenant never occupied the rental house, she did sign a fixed term tenancy committing her to a one-year rental of these premises commencing on October 1, 2011. This tenancy agreement commenced the financial obligation she committed to undertake on the date she signed the tenancy agreement, August 24, 2011. In the emails she sent to the landlord's agent prior to signing this agreement, she conceded

that she was making the decision to rent these premises on the basis of photographs of the premises.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenant was in breach of her fixed term tenancy agreement because she vacated the rental premises prior to the September 30, 2012 date specified in that agreement. As such, the landlord is entitled to compensation for losses incurred as a result of the tenant's failure to comply with the terms of her tenancy agreement and the *Act*. I note that section 45(1) of the *Act* requires a tenant to end even a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due.

I find that there is undisputed evidence that the tenant did not pay any rent for October 2011 or November 2011, the months identified in the landlord's claim for a monetary award. However, section 7(2) of the *Act* also places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the undisputed evidence presented by the landlord, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises commencing on October 11, 2011, the date when the tenant advised that she would not be occupying the rental house. The landlord gave undisputed testimony that advertisements were placed on the landlord's website and in local newspapers. As such, I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the tenant's loss.

I find little question that the landlord is entitled to reimbursement for unpaid rent for October 2011, as the landlord held this property for the tenant expecting the tenancy to commence October 1, 2011 as set out in this fixed term tenancy agreement. The tenant did not attend the property until October 11, 2011 at which time the tenant advised the landlord that the rental home was not to her liking and that the landlord would have to find another tenant. I find that the landlord has established entitlement to a monetary award of \$1,250.00 for unpaid October 2011 rent.

In order to avoid any responsibility for rent for November 2011 in any type of residential tenancy, the tenant would have needed to provide her notice to end this tenancy before October 1, 2011. Since the tenant did not do so until October 11, 2011, I find that the landlord is also entitled to a monetary award of \$1,250.00 for unpaid rent for November 2011.

Section 32 of the *Act* also requires a landlord to provide the services and facilities to a tenant that the landlord committed to provide when the residential tenancy agreement was undertaken and in a state of decoration and repair that complies with standards required by law and “having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.” If there is a failure to do so, the tenant may be entitled to a reduction in rent or a monetary award pursuant to sections 65 or 67 of the *Act*.

I do not accept the tenant’s assertion that the condition of the premises was so poor that she should be relieved of all responsibility for honouring the terms of her fixed term tenancy agreement. Based on the written evidence submitted by the landlord and the oral testimony of the parties, the tenant was also concerned that the premises would not be suitable for her dogs and were not as secluded as she expected. I find that the tenant did not exercise due diligence in checking these and other features of the rental property before she entered into a one-year fixed term tenancy agreement. While I can appreciate that the distances involved prevented the tenant from physically inspecting the property before she signed the tenancy agreement, I find that the landlord should not suffer a loss as a result of the tenant’s failure to check features of the tenancy that she later found unsuitable for her needs. However, I find that there is undisputed evidence that the premises were not clean when the tenant attended at the property on October 11, 2011. This was evidenced by the tenant’s undisputed testimony that the landlord’s agent offered to reduce rent for October 2011 by \$180.00 to reflect the condition of the rental unit when the tenant was planning to move into this rental home. I find that the problems with a lack of cleaning extended far beyond the owner’s claim at the hearing that the home might have been suffering from “stale air” as it had not been opened for awhile after he vacated the home. I also take into consideration that the landlord’s agent who was interacting with the tenant while she was considering committing to this fixed term tenancy had not visited the prospective rental property and thus was in an ill-advised position to determine whether the premises were indeed as portrayed to the tenant in the photographs sent to the tenant.

In considering the amount of rent reduction that would be appropriate for this tenancy, I have given consideration to the tenant’s undisputed oral evidence supported by her witness that the tenant would have needed to spend an entire week cleaning the premises in order to ready it for her tenancy. As I find this estimate from the tenant represents a more realistic estimate of the extent of the cleaning that would have been required to prepare this rental home for occupancy by the tenant than that offered by the landlord’s agent on October 11, 2011, I reduce the monetary award in the landlord’s favour by an estimated 40 hours of cleaning at a rate of \$20.00 per hour, a total of

\$800.00 in total. I deduct this amount from the monetary awards issued in the landlord's favour for unpaid rent for the months of October 2011 and November 2011.

Although the landlord's application was limited to the recovery of unpaid rent and the filing fee for the landlord's application and for retention of the tenant's security deposit, I am satisfied that the landlord included in the Details of the Dispute a request for reimbursement of the \$575.00 liquidated damages clause included in the residential tenancy agreement. In the application for dispute resolution this was identified as a "lease break fee." The landlord's property manager testified that this was a valid pre-estimate for the costs that the landlord would have to pay the property management company to re-advertise the property for lease, show the premises to prospective tenants, and look after the administration of a new lease agreement. As the tenant testified that she wanted this entire matter addressed at this hearing and there is little doubt that this provision was included in the fixed term tenancy agreement she signed on August 24, 2011, I find that the landlord is entitled to a monetary award of \$575.00 for liquidated damages..

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee for this application from the tenant.

### Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent less rent deductions as noted, liquidated damages as set out in the tenancy agreement, and the filing fee for this application, and to retain the tenant's security deposit:

Item	Amount
Unpaid October 2011 Rent	\$1,250.00
Unpaid November 2011 Rent	1,250.00
Less Rent Reduction due to Condition of Premises (40 hours @ \$20.00 per hour)	-800.00
Liquidated Damages	575.00
Less Security Deposit	-625.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$1,700.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to

comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

As discussed during this hearing and as allowed under the *Act*, I direct that the tenant's address for the purposes of the *Act* be established at her Canadian business address as she provided during the hearing as follows:

555 Main Street  
Anytown BC (Postal Code)

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: January 17, 2012

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Residential Tenancy Branch