



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order for loss of revenue and for damage to the rental unit, authority to keep all or part of the security deposit, and to recover the filing fee for the Application.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on November 16, 2011, and with the amended Application for Dispute Resolution and Notice of Hearing by registered mail on January 26, 2012, the tenant did not appear. The landlord provided a copy of the registered mail receipts, testified that the mail was sent to the address to which the tenant provided as a forwarding address and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the tenant's absence.

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

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.

### Issue(s) to be Decided

Has the landlord established an entitlement for a monetary order for loss of revenue and damages to the rental unit and to recover the filing fee?

Has the landlord established an entitlement for authority to retain the tenant's security deposit?

Background and Evidence

This one year, fixed term tenancy began on April 1, 2011, actually ended on October 31, 2011, when the tenant vacated the rental unit, monthly rent was \$850.00 and the tenant paid a security deposit of \$425.00 at the beginning of the tenancy on or about March 3, 2011.

The landlord's monetary claim is as follows:

November rent	\$850.00
December rent	\$850.00
Advertising costs	\$275.00
Damages	\$96.32
Lock change	\$151.20
Re-rental fee	\$84.00
Filing fee	\$50.00
<b>TOTAL</b>	<b>\$2356.52</b>

The landlord's agent testified that the tenant notified the landlord in writing on September 30, 2011, that she was vacating the rental unit earlier than the end of the fixed term, that being October 31, 2011.

The landlord's agent submitted that upon receiving the tenant's notice, the rental unit was immediately advertised extensively, in three local newspapers.

The landlord's agent submitted that she was unsuccessful in re-renting the rental unit until January 2012. Therefore, according to the landlord's agent, the tenant is responsible for the landlord's loss of rental revenue for November and December 2011. As well, the landlord's agent charged the owner of the residential property a fee for management services.

Upon query, the landlord's agent confirmed that the rental unit initially was placed back on the market, at the beginning of October 2011, for monthly rent of \$900.00, and that the rent was gradually reduced to \$850.00 at the end of November and then to \$825.00 in December. As to why the monthly rent for the rental unit was advertised for an amount greater than the tenant had been paying, the landlord's agent submitted that the accustomed rate of monthly rent received for the rental unit was \$900.00 per month, which was closer to market value.

The landlord's agent stated that the damages claimed were for nail and screw holes to the tiles in the backsplash due to the tenant's installation of a security system, which caused the landlord to have the holes repaired.

The landlord's agent stated that the tenant failed to return the key at the end of the tenancy, which caused the landlord to incur costs for changing the locks.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove four different elements:

**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.

### **Loss of Rent**

It is clear the tenancy agreement was for a fixed term set to expire on March 31, 2012 and that the tenant breached this term of the agreement. The amount of loss of rent has been substantiated by the landlord. Therefore, I find the landlord satisfied the first and third test for damages, as outlined above.

Upon a review of the evidence, I find the landlord advertised the rental unit at a monthly rent greater than the tenant's obligation and that the increased rent was advertised for a period of at least two months. I have no evidence before me that the monthly rent of \$900.00 was the market value as indicated by the landlord's agent and I am led to conclude that the market value was closer to the rate accepted by the landlord for the new tenant, that being \$825.00.

I find that with the delay of two months by the landlord in reducing the advertised monthly rent to the rate paid by the tenant that the landlord failed to substantiate that

they took reasonable measures to mitigate their loss. I therefore find that the landlord has failed to meet the fourth step of their burden of proof and I **dismiss** the landlord's **monetary claim** for loss of rent of \$850.00 for both November and December 2011, in the amount of \$1,700.00.

### **Advertising costs**

I am satisfied the landlord incurred advertising costs to attract a replacement tenant; however, I find the landlord is only entitled to recover a portion of the amount claimed against the tenant. As I previously found that the landlord failed to take sufficient action to attract a replacement tenant in a more timely manner, I find it reasonable to award the landlord advertising costs incurred in the month of December only when the asked for monthly rent was reduced. A review of the evidence of the landlord's evidence demonstrates that the landlord made two payments of \$37.50 for advertising in the month of December and I therefore find the landlord has established a **monetary claim** in the amount of **\$75.00**.

### **Damages**

At the end of a tenancy, the Act requires the tenant to leave the rental unit reasonably clean and undamaged. Reasonable wear and tear is not damage and a tenant is not responsible for amounts incurred to make repairs for normal wear and tear. I do not find the tenant's drilling holes into the tile backsplash to be reasonable wear and tear. I therefore find the landlord has established a **monetary claim** in the amount of **\$96.32**.

### **Lock change**

The Act requires that a tenant return to the landlord the keys to the rental unit. As I find that the landlord substantiated that the tenant failed to return the keys, I find the landlord has established a **monetary claim** in the amount of **\$151.20**.

### **Management Company fees**

I find that the landlord or owner 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 I do not have authority to grant the landlord fees for choices they have made and I **dismiss** the landlord's claim for management fees of \$84.00.

### **Filing fee**

I find the landlord's application contained merit and I award the landlord recovery of the filing fee in the amount of \$50.00.

### **Conclusion**

I find the landlord has established a **monetary claim** in the amount of **\$372.52**, comprised of newspaper advertising in the amount of \$75.00, damages in the amount of \$96.32, lock change in the amount of \$151.20 and recovery of the filing fee for \$50.00.

I **order** that the landlord retain the amount of \$372.52 from the tenant's security deposit of \$425.00 in satisfaction of the claim and direct that they return the balance of \$52.48 to the tenant. Pursuant to section 67 of the Act I grant the tenant a monetary order for the balance due of **\$52.48**.

I am enclosing a monetary order for \$52.48 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) for enforcement 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: February 06, 2012.

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Residential Tenancy Branch