



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an order for money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act"), to keep all or part of the tenant's security deposit, and to recover the filing fee for the Application.

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

### **Preliminary Issue:**

The landlord's agent testified that she telefaxed documentary evidence to the Residential Tenancy Branch ("RTB"), the week prior to the hearing. The landlord's agent stated that she called into the RTB to confirm receipt of the documents, but was informed they had not been received. Thereafter, the landlord's agent stated that she telefaxed the documents to the RTB the night prior to the hearing.

The documents were not in the file at the time of the hearing; however, they were received via email during the hearing, of which I was not aware.

Residential Tenancy Branch Rules of Procedure state that whenever possible, documents to be relied upon as evidence must be filed with the application for dispute resolution. In this case, the landlord submitted evidence three months after the filing of their application. I find through the testimony of the landlord's agent that these documents were available at the time the application was filed and that they were not. Therefore I have neither reviewed nor considered the late submission of these documents by the landlord.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, for authority to retain the tenant's security deposit, and to recovery of the filing fee?

Background and Evidence

Although no tenancy agreement was entered into evidence, the parties agreed that this 6 month, fixed term tenancy started on May 1, 2011, it continued thereafter on a month to month basis until the tenant moved out of the rental unit on November 18, 2011, monthly rent was \$695.00 and the tenant paid a security deposit of \$347.50, on or about April 14, 2011.

The parties also agreed that a final condition inspection of the rental unit was conducted on November 18, 2011, the tenant gave to the landlord her written forwarding address on that date, and the tenant returned the keys on that date.

In support of her application, the landlord's agent stated that the tenant gave her written notice to vacate, effective at the end of November, 2011, to the landlord's agent on November 1, 2011. Therefore the tenant's notice was insufficient to end a month to month tenancy and that the tenant is responsible for loss of rent for December 2011.

The landlord submitted that the tenant, on the date of the move-out inspection, agreed to deductions of her security deposit in the amount of \$70.00 for carpet cleaning and \$45.00 for general cleaning. The tenant confirmed her agreement.

The landlord's agent submitted that the monetary claim has been reduced from the application amount to the amount of \$462.50, which includes a request for loss of rent for December 2011, in the amount of \$695.00, and the amount of \$115.00 for the agreed upon deductions, reduced by the amount of the tenant's security deposit of \$347.50.

When asked, the landlord's agent stated that when the landlord received the tenant's written notice, the landlord began advertising the rental unit on Craigslist, Kijiji and their own website.

Upon further query the landlord acknowledged that she did not submit proof of his advertisements for the rental unit.

The landlord's agent stated that they were not successful in re-renting the rental unit until January 2011.

The evidence submitted in the timeframe accorded by the Rules of Procedure by landlord and considered by me was a "Statement of Account Detail by Billing Month."

In response, the tenant submitted that when she called the landlord's agent that she had dealt with during the tenancy, he informed her that her notice was one day late, but that she should not worry about it as he would "run it through."

When asked, the tenant said she took the landlord's agent's statement to mean the landlord would not seek to hold her responsible for the rent for December, 2011.

### Analysis

Based on the above testimony and evidence, and on 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 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.

I find the uncontradicted testimony and evidence supports that the tenant breached Section 45 (1) of the Residential Tenancy Act which deals with a tenant's notice to end a month to month tenancy.

However, as to the landlord's claim for lost revenue for the month of December 2011, I find the landlord failed to submit proof of the advertisement of the rental unit. Without

this evidence, I am unable to examine and make a determination as to whether the advertisement took place or if so, when it began, the frequency of the advertisement or that the landlord took reasonable steps to mitigate their loss by reducing the monthly rent requested.

In the absence of proof by the landlord of advertisements, I find that the landlord submitted insufficient evidence to prove step 4 in the test for damage and loss and I therefore **dismiss** the landlord's claim for loss of rent for December, 2011, for \$695.00, without leave to reapply.

I find the landlord's claim did not contain sufficient merit to award them recovery of the filing fee and I therefore decline the landlord recovery of the filing fee.

### Conclusion

I find that the landlord has established an entitlement to **monetary compensation** in the amount of **\$115.00**, comprised of \$70.00 for carpet cleaning and \$45.00 for general cleaning, which the tenant acknowledged as her obligation.

I **order** that the landlord retain the amount of \$115.00 from the tenant's security deposit of \$347.50 in satisfaction of the claim and direct that they return the balance of **\$232.50** to the tenant. Pursuant to section 67 of the Act I grant the tenant a monetary order for the balance due of **\$232.50**.

I am enclosing a monetary order for **\$232.50** 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 15, 2012.

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Residential Tenancy Branch