



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**MND, MNR, MNSD, MNDC, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage to the rental unit, unpaid rent, damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. The tenant provided affirmed testimony that she was not served with Notice of this hearing until February 3, 2012; the landlord had applied on December 1, 2011. The landlord explained that they had served the tenant on December 2, 2011 and that the mail was returned, marked as moved. On December 6, 2011, the landlord obtained a new address; a hearing package was sent to that address and was unclaimed. The landlord was then able to speak with the tenant, who provided a current address and service was completed.

One 5 page evidence submission was made by an individual who had received notice of the hearing by mail; she stated that she was not the person who had lived in Victoria. It appeared that at one point the landlord had mistakenly served someone who went by the same name as the tenant.

The tenant confirmed that she had received the landlord's evidence submissions and that she did not wish to adjourn or to submit any written evidence; she was provided with those options.

At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$7,425.00 in lost rent revenue?

Is the landlord entitled to compensation for damage in the sum of \$2,312.59?

May the landlord retain the deposit in partial satisfaction of the claim?

Is the landlord entitled to the \$100.00 filing fee cost?

Background and Evidence

The landlord has made the following claim:

Loss of rent revenue January to May, 2011	7,425.00
Cleaning	90.00
Advertising	1,210.74
Strata fines	600.00
Carpet cleaning	84.00
New tenant move-in fee	100.00
TOTAL	9,737.59

This fixed-term tenancy commenced on September 4, 2009, and was to end on August 31, 2010 at which time the tenancy would continue on a month-to-month basis. Rent was \$1,650.00 per month due on the first day of each month. A deposit in the sum of \$825.00 was paid on September 3, 2009. A move-in condition inspection report was completed and submitted as evidence.

A copy of the tenancy agreement was supplied as evidence.

The tenant did not dispute the landlord's submission that unknown individuals took possession of the rental unit as the result of the tenant having given copies of the keys to her boyfriend. The tenant had left the City of Victoria in November, 2010, and thought that the keys were being used only to check the unit, for insurance purposes.

The tenant had given the landlord written notice dated October 31, 2009, indicating she would vacate by December 31, 2009. Around December 31, 2009 the landlord went to the unit to speak with the tenant; strangers came to the door and would not provide him access. The landlord asked the police attend at the unit, which a team of officers did on a date in early January, 2010. The police had suspected illegal activity was occurring in the unit and told the landlord they were aware of the occupants.

The landlord gave the tenant credit for returning to the Victoria from Calgary to make efforts to clean the rental unit; her efforts greatly mitigated the claim the landlord has

had to make. Photographs of the unit were supplied as evidence of the amount of garbage and damage done to the unit prior to the tenant cleaning.

On January 19, 2010 the landlord completed a move-out condition inspection report which the tenant signed, agreeing to the damages listed. A copy of this report was submitted as evidence.

The tenant signed a security deposit statement on January 19, 2010, in which she agreed to deductions from the deposit for strata fines in the sum of \$600.00 and a partial payment toward January rent in the sum of \$225.00.

The landlord supplied copies of advertising they completed for the unit commencing in early December, 2009. By April 23, 2010, the rent was lowered to \$1,200.00 per month; the landlord was able to locate new occupants effective May 15, 2010, at \$1,550.00 per month. A copy of the new tenancy agreement was supplied as evidence.

The landlord explained that the tenancy agreement did not include a liquidated damages clause, as they had decided to amend their term, to better reflect the intention of the clause. The landlord has claimed the actual costs incurred for the advertising.

A receipt for the carpet cleaning, paint repair and cleaning were supplied.

The landlord paid a move-in fee for the new occupants; this cost has been claimed as the landlord had recently paid the fee for the tenant.

The tenant stated that if she had realized she could be held responsible for the loss of revenue she would have made more efforts to locate new occupants. The tenant believed that the landlord had agreed to end the tenancy once she had submitted her notice ending tenancy.

The tenant did not dispute the landlord's claim made in relation to the remaining damage costs for cleaning and painting, fines and move-in fee.

The landlord did not give the tenant a mutual agreement ending the tenancy, but did acknowledge her intention to vacate the unit.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Based on the evidence before me I find that the tenancy ended on January 19, 2010; the date the condition inspection report was completed.

Based on the evidence before me and the testimony of the parties, I find, on the balance of probabilities, that despite the tenant's efforts to clean the rental unit, the landlord was required to perform further cleaning. Therefore, based on the inspection report and the verification of costs, I find that the landlord is entitled to cleaning costs, carpet cleaning costs, painting costs and moving fees claimed. The tenant did make efforts to minimize the loss suffered by the landlord, but the loss was a direct result of the tenant failing to provide proper over-sight of the rental unit for which she had responsibility.

The tenant has previous signed a security deposit document acknowledging her responsibility for the strata fines and a partial payment toward January, 2010, rent owed. I have accepted this acknowledgement and find the landlord is entitled to these costs.

In relation to the claim for advertising costs; I have considered Residential Tenancy Branch policy, which I find takes a reasonable stance. Policy suggests that when making a claim in these types of cases I should consider if the compensation is sufficient to put the landlord in the same position as if the tenant had not breached the agreement.

*As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy...*

*In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.*

The landlord made attempts to re-rent the unit at the same rent, eventually dropping the rent by \$450.00 per month. The unit was eventually rented for a negotiated sum of \$1,550.00 per month. From the evidence before me the landlord made attempts to mitigate the loss claimed, made constant efforts to find new occupants and took appropriate steps by advertising the unit.

Therefore, based on the evidence before me I find, as the result of a breach of the terms of the fixed-term tenancy agreement, the tenant is responsible for the loss of rent revenue incurred by the landlord from January to May 15, 2010. There was no evidence before me that the landlord provided mutual consent ending the tenancy; only that the landlord acknowledged the tenant's intent to vacate the unit before the end of the fixed term.

Therefore, I find that the landlord is entitled to the following compensation:

	Claimed	Accepted
Paint repairs	227.85	227.85
Cleaning	90.00	90.00
Advertising	1,210.74	1,210.74
Strata fines	600.00	600.00
Carpet cleaning	84.00	84.00
New tenant move-in fee	100.00	100.00
<b>TOTAL</b>	<b>9,737.59</b>	<b>9,737.59</b>

I find that the landlord's application has merit, and that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$825.00, in partial satisfaction of the monetary claim.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$9,837.59, which is comprised of damage or loss under the Act, damage to the unit and \$100.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$825.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$9,012.59. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 16, 2012.

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Residential Tenancy Branch