



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR, MNDC, MNSD, FF

### Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security and pet deposit deposits / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from May 1, 2011 to April 30, 2012. Monthly rent of \$1,550.00 was payable in advance on the first day of each month. A security deposit of \$775.00 and a pet damage deposit of \$775.00 were both collected. There is no copy of a move-in condition inspection report in evidence.

By way of e-mail dated October 3, 2011, the tenants gave notice to end the tenancy. Thereafter, in regard to unpaid rent for October, the landlord issued a 10 day notice to end tenancy for unpaid rent dated October 7, 2011. Subsequently, the tenants made no further payment toward rent and they completed their move out on October 15, 2011. There is no copy of a move-out condition inspection report in evidence.

The parties presented differing accounts as to their understanding around whether or not the unit has been re-rented, and the landlord's application does not include a specific claim for loss of rental income after the end of October 2011. Further, the application includes no evidence of efforts which may have been undertaken by the landlord to mitigate any loss of rental income after the end of October 2011. The

tenant's understanding is that new renters were found and that advertising had been undertaken on craigslist.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 45 of the Act speaks to **Tenant's notice**, and provides in part:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 52 of the Act addresses **Form and content of notice to end tenancy**:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Based on the documentary evidence and the affirmed testimony of the parties, the various aspects of the landlord's application and my findings are set out below:

**\$1,550.00\***: unpaid rent for October 2011. The tenants do not dispute that their notice to end tenancy does not comply with the legislative provisions set out above, and they do not dispute that rent has not been paid for October 2011. Accordingly, I find that the landlord has established entitlement to the full amount claimed.

**\$50.00**: fee assessed for NSF cheque. There is no dispute between the parties that the application concerns an NSF fee assessed in relation to only 1 cheque, which concerns rent for October 2011. However, as to the quantum of such a fee, section 7 of the Regulation provides in part:

**Non-refundable fees charged by landlord**

7(1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent;

Accordingly, I find that the landlord has established entitlement limited to **\$25.00\***.

**\$77.50**: fee for late payment of rent. For reasons identical to those set out immediately above, I find that the landlord has established entitlement limited to **\$25.00\***.

**\$109.76\***: carpet cleaning. Residential Tenancy Policy Guideline # 1 speaks to "Landlord & Tenant – Responsibility for Residential Premises," and provides in part:

**CARPETS**

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

A copy of the receipt for this cost is included in evidence and, as the tenants do not dispute their responsibility for the cost incurred by the landlord for carpet cleaning, I find that the landlord has established entitlement to the full amount claimed.

**\$37.50\***: *fine assessed by strata (“move-out overtime charge”)*. As the tenants do not dispute their responsibility for this fine, I find that the landlord has established entitlement to the full amount claimed.

**\$200.00**: *fine assessed by strata (failure to properly dispose of gas tank)*. While the tenants acknowledge that the gas tank in question was not properly disposed of, despite efforts made by the landlord's agent during the hearing, the agent was unable to confirm whether a fine in any particular amount had ultimately been assessed by the strata. Should it become necessary, the parties are encouraged to resolve this matter directly between them. In the meantime, however, this aspect of the application is hereby dismissed with leave to reapply.

**\$868.00**: *re-leasing fee*. Clause # 12 of the tenancy agreement includes a provision for “liquidated damages” in the event that the tenants end the fixed term of tenancy “before the end of the original term.” The amount of the liquidated damages is not set at a pre-determined rate in the tenancy agreement but, rather, it is described as comprising “all administration costs of re-renting the said premises.” Related documentation includes a “Leasing Invoice” showing a total cost of \$952.00 (fee of \$850.00 + HST of \$102.00).

Residential Tenancy Policy Guideline # 4 addresses “Liquidated Damages,” and provides in part:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, a dispute resolution officer will consider the circumstances at the time the contract was entered into.

I find that there is insufficient evidence that \$952.00 (shown on the “Leasing Invoice”) reflects “a genuine pre-estimate of the loss at the time the contract is entered into.” In the result, I find that this amount constitutes a penalty and is therefore unenforceable.

Further, I find there is insufficient documentary evidence to support the assessment of a re-leasing fee in the amount of \$868.00. Accordingly, this aspect of the application is hereby dismissed.

**\$21.34: cost of registered mail.** Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the landlord's application is hereby dismissed.

**\$50.00\*: filing fee.** As the landlord has achieved a measure of success with this application, I find that the landlord has established entitlement to recovery of the full filing fee.

Following from all of the above, I find that the landlord has established a claim in the total amount of \$1,797.26. I order that the landlord retain the security deposit and the pet damage deposit in the total amount of \$1,550.00 (\$750.0 + \$750.00), and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$247.26 (\$1,797.26 - \$1,550.00).

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of \$247.26. Should it be necessary, this order may be served on the tenants, filed in the 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 27, 2012.

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Residential Tenancy Branch