



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD and FF

### Introduction

This hearing was convened on the landlord's application of January 13, 2012 seeking a monetary award for unpaid rent and cleaning and repairs to the rental unit. The landlord also sought recovery of the filing fee for this proceeding and authorization to retain the tenant's security deposit in set off against the balance found to be owed.

### Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a monetary award for the claims submitted and authorization to retain all or part of the security deposit in set off against any balance found to be owed.

### Background, Evidence and Analysis

This tenancy began on April 15, 2009 and the tenant vacated on or about November 30, 2011 pursuant to a Notice to End Tenancy for unpaid rent served on by posting on the tenant's door on November 7, 2011. Rent was \$600 per month including parking and storage locker and the landlord holds a security deposit of \$282.50 paid April 3, 2009.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after the tenant had a shortfall of \$110 in the rent due on November 1, 2011.

The landlord claims and I find as follows:

**Rent shortfall for November 2011 - \$110.** The parties concur that this amount is owed and the claim is allowed.

**General cleaning - \$90.** The landlord has submitted an employee time sheet dated December 28, 2011 claiming this amount. The tenant, who is a professional housekeeper, has submitted letters from two other persons corroborating her own claim that the rental unit had been left thoroughly cleaned. I accept the evidence of the tenant on that question. In addition, I find that the tenant was not provided with two opportunities to participate in completing a move-out condition inspection report as required under section 35(2) of the Act. Therefore, this claim is dismissed.

**Loss of rent for December 2011 - \$600.** The landlord makes this claim on the grounds that the tenant did not give written notice to end the tenancy. The tenant stated that she was not aware of the need to give written notice when she was moving to honour the Notice to End Tenancy for unpaid rent, which, having been service by posting on November 7, 2011, was effective on November 20, 2011.

In assessing this claim, I must also take into account the duty to act reasonably to minimize loss which is imposed on parties making a claim for damage or loss under section 7 of the Act. Copy of an email from the caretaker to the building manager dated January 12, 2012 reported that she had seen the tenant moving furniture out shortly after the Notice to End Tenancy had been served. She said she then reminded the tenant of the November arrears and advised her that she would be accountable for the December loss of rent.

According to the tenant, that exchange took place on November 15, 2011. The tenant stated that she again ran into the caretaker who then inspected the unit on November 29, 2011. At the time there were only four boxes left to be moved after which the tenant would mop the floor to complete the move and cleaning. The building manager concurred that the keys had been returned to him on November 30, 2011.

The duty to minimize loss began when the landlord was reasonably certain as to when the tenant would be giving vacant possession.

While I initially advised the parties that I believed the tenant was responsible for the full rent for December 2011, on reflection, I note that the landlord has submitted no documentary evidence of efforts to find a new a new tenant for some time in December. That, taken together with the fact that the cleaning report is dated December 28, 2011 raises further doubt as to whether the landlord simply assumed that the tenant would be responsible for the December rent and made little or no effort to minimize the loss.

Therefore, I am reducing the award for the loss of rent for December to one-half month, or \$300.

**Filing fee - \$50.** As the application has succeeded in part on the claim for loss of rent but has not succeeded on the damage claim on the issue of the move-out condition inspection report, I find that the landlord is entitled to recover one-half of the filing fee for this proceeding from the tenant and award \$25 on the claim.

**Security deposit – (\$282.50).** As authorized under section 72 of the *Act*, I hereby order that the landlord may retain the tenants security deposit in set off against the balance owed.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Rent shortfall for November 2011	\$110.00
One-half of filing fee	25.00
Sub total	\$435.00
Less retained security deposits (no interest due)	- 282.50
<b>TOTAL remaining balance owed to landlords by the tenants</b>	<b>\$152.50</b>

### Conclusion

In addition to authorization to retain the tenants' security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$152.50**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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: March 16, 2012.

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Residential Tenancy Branch