



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit; unpaid rent, to retain all or part of the security deposit, compensation for damage or loss under the Act 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. 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 for unpaid January 2012, rent in the sum of \$1,697.00?

Is the landlord entitled to compensation for damage the rental property in the sum of \$5,000.00?

Is the landlord entitled to compensation in the sum of \$5,091.00 for loss of 3 months' rent revenue?

Is the landlord entitled to filing fee costs?

### Background and Evidence

This fixed-term tenancy commenced on July 8, 2011; rent was \$1,697.00 per month, due on the first day of each month. A security deposit in the sum of \$850.00 and pet deposit in the amount of \$400.00 were paid. A move-in condition inspection report was completed. The parties had agreed by text message to meet at the unit for a move-out inspection at 4 p.m. on January 28, 2012, but the tenant did not attend.

The parties agreed that the tenant had been given a 10 Day Notice to End Tenancy for Unpaid Rent, issued on January 16, 2012, which required the tenant to vacate by January 25, 2012; the tenant did not dispute the Notice.

A copy of the tenancy agreement, email confirming the inspection date and time and condition inspection report was supplied as evidence.

The parties agreed that the tenant had given the landlord permission to retain both of the deposits for rent owed.

The landlord has made the following claim:

January 2012 rent	1,697.00
Drywall repair	1,000.00
Paint	3,500.00
3 months loss of rent	5,091.00
TOTAL	11,788

The tenant's agent acknowledged that January, 2012, rent in the sum of \$1,697.00 has not been paid.

The landlord stated that the tenant did not clean the home; the condition inspection report completed in the absence of the tenant indicated that many areas of the home had not been cleaned. The landlord supplied twelve photographs in support of the claim for cleaning and wall repair. The photographs showed a small hole in the drywall, some nail holes in the walls, a chair in a room, some dirt in a toilet and a corner and some flooring.

The landlord did not supply any verification of the costs claimed.

The tenant's agent stated that he was at the house, along with 4 other individuals, at the end of the tenancy. The agent testified that the unit was immaculate when the tenant vacated. The agent agreed that a small hole had been placed in one wall.

The landlord stated the home needed so much cleaning and repair that he was unable to immediately place new occupants in the unit. The landlord has claimed 3 month's revenue loss; and was able to locate new occupants for April 1, 2012.

The landlord advertised on several popular web sites, but could not recall when those ads were placed, the length of time the ads were placed and did not supply any information on the number of calls he may have received in response to the ads.

### 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 acknowledgment of the tenant's agent, I find that the landlord is entitled to compensation for unpaid January 2012, rent in the sum of \$1,697.00, and that the \$1,250.00 in deposits may be retained in partial satisfaction.

The landlord has not provided any evidence in support of his submission that the rental unit required complete painting and cleaning equivalent to \$500.00. The tenant's agent disputed the claim. The photographs showed a small of dirt in a toilet and a corner of a floor; not sufficient to support the claim made by the landlord. Further, the landlord did not provide any evidence verifying the costs he has claimed to incur. Therefore, I find, on the balance of probabilities and in the absence of any verification of costs claimed; that the landlord's claim for cleaning and painting is dismissed.

The tenant's agent acknowledged the need for repair to a small hole made in the drywall. Therefore, I find that the landlord is entitled to a nominal amount of compensation in the sum of \$60.00. The balance of the claim for drywall repair is dismissed as there is no evidence before me verifying the amount claimed. Further, there was no evidence before me of any other damage to the walls, outside of a small number of nail heels which a tenant is entitled to make as part of normal day-to-day living when hanging items.

The landlord did not provide any evidence of having located new occupants for February 1, 2012. He served the tenant with a Notice requiring vacant possession on January 25, 2012 and the tenant did vacate the unit. The tenant did not dispute the Notice. There was no evidence before me that the landlord advertised the unit at all during January; in preparation for the vacancy he knew was going to occur. The landlord did not supply copies of advertisements or any other evidence of attempts made to minimize the claim he is now making. The landlord did not supply any verification of the work he claims was completed in the home, why the work could not have taken place immediately after the tenant vacated or any evidence that potential occupants were turned away.

Section 7 of the Act requires a claimant to make efforts to mitigate a claim, and I find that the landlord has failed, on the balance of probabilities, to show he has done so. Therefore, I find that the claim for loss of revenue is dismissed.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Cleaning	500.00	0
Drywall repair	1,000.00	60.00
Paint	3,500.00	0
3 months loss of rent	5,091.00	0
<b>TOTAL</b>	<b>11,788</b>	<b>1,757.00</b>

The landlord will retain the deposits in the sum of \$1,250.00 in partial satisfaction of the claim.

I find that the landlord's application has partial merit, and I find that the landlord is entitled to recover a filing fee that is relative to the successful portion of his claim, in the sum of \$50.00, from the tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,807.00, which is comprised of \$unpaid rent; damage to the rental unit and \$50.00 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 deposits in the amount of \$1,250.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$557.00. 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.

The balance of the landlords' claim is dismissed.

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: April 03, 2012.

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Residential Tenancy Branch