



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC, MNSD; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for compensation for loss of revenue and strata fines; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that the Notice of Hearing documents were mailed to the Tenant, via registered mail, to the forwarding address provided by the Tenant. The Landlord provided the receipt and tracking numbers in evidence.

Based on the Landlord's affirmed testimony and documentary evidence, I am satisfied that the Tenant was duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

### **Issues to be Decided**

- Is the Landlord entitled to compensation pursuant to the provisions of Section 67 of the Act?
- May the Landlord apply the security deposit towards partial satisfaction of his monetary award?

### **Background and Evidence**

The Landlord gave the following oral testimony and documentary evidence:

A copy of the Tenancy agreement was provided in evidence. The tenancy agreement is a one year term lease, ending December 1, 2012. This tenancy began on December 1, 2011. Monthly rent was \$1,000.00, due the first day of each month. The Tenant paid a security deposit in the amount of \$500.00 at the beginning of the tenancy.

The Landlord testified that the Tenant gave notice that she was ending the tenancy on January 10, 2012, and moved out on January 31, 2012. The Landlord stated that he was able to re-rent the rental unit effective February 22, 2012, for \$1,000.00 per month

and that the new occupants paid \$150.00 towards February rent. The Landlord seeks to recover his loss of revenue from the Tenant for the month of February, 2012.

The Landlord testified that he provided the Tenant with the Strata bylaws for the rental unit at the beginning of the tenancy. He stated that there is a clause in the strata bylaws stipulating a \$200.00 move-out fee. The Landlord testified that there is also a clause in the tenancy agreement that the Tenant is responsible for paying the move out fee of \$200.00 at the end of the tenancy, if she ends the tenancy before the one year term is complete. The Landlord testified that he was billed, and paid, the \$200.00 fee, which he now seeks to recover from the Tenant.

### **Analysis**

Section 67 of the Act states:

#### **Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the undisputed affirmed testimony of the Landlord and the documentary evidence provided I find that the Tenant signed a contract to rent the rental unit for one year, but breached the agreement by moving out before the end of the term. The tenancy agreement also provided that she pay the \$200.00 strata move-out fee if she ended the tenancy early. I accept the Landlord's undisputed affirmed testimony that the Tenant was provided a copy of the bylaws establishing the fee and that he paid the \$200.00 fee to the Strata.

I find that the Landlord took reasonable steps to re-rent the rental unit and therefore minimize his loss. With respect to the Landlord's loss of revenue, I find that the Landlord received \$150.00 in rent from the new occupants for the month of February and therefore his loss of revenue for February was \$850.00.

I find that the Landlord has provided sufficient evidence to establish his claim for loss of revenue in the amount of \$850.00 and damages in the amount of \$200.00.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of his monetary award. No interest has accrued on the security deposit.

The Landlord has been successful in his application and I find that he is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Loss of revenue	\$850.00
Recovery of the strata move-out fee	\$200.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,100.00
Less security deposit	<u>- \$500.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$600.00</b>

### **Conclusion**

I hereby provide the Landlord a Monetary Order in the amount of **\$600.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: April 24, 2012.

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Residential Tenancy Branch