



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDS, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee.

Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

### Background and Evidence

This fixed term tenancy began December 21, 2010 monthly rent of \$1100.00 and the tenants paid a security deposit of \$1100.00.

The landlord testified that the tenants broke the fixed term lease and vacated the rental unit September 30, 2011; the lease has an effective end of tenancy date of December 31, 2011.

The landlord and tenant agreed in this hearing that as the second tenant named on this application vacated the rental unit in April 2011 and the first tenant retained possession of the rental unit until September 20, 2011, that the second tenant named in this application would be severed from being named in the landlord's claim.

The landlord stated that the tenant did not pay rent for the months of July, August and September 2011. The landlord stated that they also suffered a loss of rental income as the rental unit remained vacant for the months of October, November and ½ of December 2011 as it had been damaged by the tenant and extensive repairs were required.

The landlord stated that repairs had to be completed on the walls all throughout the rental unit and as a result the rental unit had to be completely repainted. The landlord also stated that the carpet was covered with stains, personal items and trash were left in the rental unit and the rental unit was not cleaned when the tenant vacated.

The tenant stated that he had gone through a very difficult personal time last year which led to the rent not being paid and him eventually vacating the rental unit after being served a notice to end tenancy by the landlord. The tenant acknowledged that there were holes, scuff marks and repairs on the walls and that he did not have the opportunity to thoroughly clean the rental unit.

The landlord acknowledged that he had possession of the rental unit as of September 20, 2011 and stated that he was seeking compensation for loss for the months of October, November and December 2012 rent.

The landlord in this application is seeking \$9837.13 compensation for the following:

Wall repair	\$11.42
Paint brushes and supplies	\$34.57
Door hardware	\$20.12
Light bulbs	\$23.45
New keys	\$21.50
Spray paint for doors	\$80.68
Spray equipment, paint	\$64.03
Slide guides, lights, pliers	\$47.17
Cable guides doors	\$80.57
Paint contractor	\$1680.00
Paint bill for contractor	\$90.79
Cleaning contractor	\$312.48
Fridge door	\$34.89
Door replacement	\$180.44
Lost rental revenue	\$7150.00
<b>Total Claim</b>	<b>\$9837.13</b>

### Analysis

Based on the documentary evidence and testimony of the parties I find that the landlord is entitled to a monetary order for unpaid rent, damages, cleaning costs and loss.

Testimony of the parties, the landlord's photographic evidence and receipts submitted for work done and supplies bought clearly establishes the condition of the rental unit upon the tenant vacating and that there was rent unpaid and a loss of rental income. Therefore the landlord is entitled to \$2687.13 for damages and cleaning costs.

In regards to the landlord's claim for unpaid rent I find that the landlord is entitled to compensation in the amount of \$3300.00.

In regards to the landlord's claim for loss of rental income, I find the claim of 2 ½ month's rent excessive therefore the landlord is entitled to the limited amount of \$1100.00.

Residential Tenancy Policy Guideline **5. speaks to the “Duty to Minimize Loss,” and provides in part as follows:**

*Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss<sup>1</sup>. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.*

Accordingly I find that the landlord is entitled to a monetary order for \$7087.13.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$100.00 filing fee.

### Conclusion

I find that the landlord has established a monetary claim for \$7087.13 in unpaid rent, loss, damages and cleaning costs. The landlord is also entitled to recovery of the \$100.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$1100.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$6087.13**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: May 10, 2012

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Residential Tenancy Branch