



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This was the hearing of an application by the landlord for a monetary order and an order to retain the security deposit. The hearing was conducted by conference call. The landlord's representative, the tenant and his partner, also a former occupant of the rental unit called in and participated in the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order and if so, in what amount?  
Is the landlord entitled to an order to retain the security deposit?

### Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began on September 1, 2011 for a one year fixed term with monthly rent of \$1,100.00 payable on the first of each month. The tenant paid a \$550.00 security deposit on July 29, 2011.

The tenant suffered a wrist injury in September, 2011. The tenant is not a Canadian citizen and not covered by a health care plan. He required surgery to treat his wrist injury and had to return to New Zealand for the surgical procedure. On February 1, 2012 he gave notice to end his tenancy effective February 29, 2012.

The tenant's partner remained in Vancouver for a time after February 29, 2012. She submitted documents, including a printed copy of a portion of the landlord's website containing an advertisement to rent a unit in the rental property. The advertisement stated that monthly rent for a one bedroom started at \$1,250.00. The tenant's partner testified that the building manager told her that she had to leave promptly because the landlord was immediately commencing some renovation work in the unit. She testified that two weeks after moving out she observed that there was a red couch inside the rental unit. She said this was an indication that the landlord was using the rental unit as a show suite. She also testified as to her belief that the unit shown in pictures on the

landlord's website was the rental unit and it appeared from the photographs that the landlord had installed a new carpet in the rental unit to cover a badly scratched floor. The landlord's representative said that the scratched floor was not caused by the tenant and pre-dated his tenancy, but that it made it more difficult to rent the unit. He said that the landlord would have been able to install the new carpet within a day of the end of the tenancy and it would not have impeded the landlord's efforts to re-rent the unit.

The landlord's representative testified that the unit was re-rented effective May 1, 2012 at a monthly rent of \$1,200.00. He said that it was the landlord's practice to place furniture in a vacant apartment as tool to help prospective tenants visualize how their furnishings may be arranged in the unit.

The landlord claimed payment of the sum of \$1,100.00, being lost rent for the month of March and liquidated damages, specified in the tenancy agreement as an agreed pre-estimate of the landlord's costs of re-renting the unit.

#### Analysis and conclusion

The fact that the tenant was forced to end the tenancy in order to return home for necessary surgery is unfortunate and understandable, but it does not constitute a ground that will excuse the tenant from liability for a breach of the fixed term tenancy agreement.

The tenant argued that the landlord's website showed an offering rent of \$1,250.00 was an indication that the landlord did not act reasonably in its efforts to mitigate its damages; the tenant submitted that the unit should have been offered at the same rent that was paid under the existing tenancy. I am not satisfied that the fact that the landlord's website stated a rent of \$1,250.00 constitutes a failure act reasonably to mitigate. The landlord's evidence is that the unit was re-rent at \$1,200.00 per month so it is clear that the landlord exercised flexibility in fixing its rents.

I find that the landlord is entitled to recover the claimed amounts for loss of revenue for March and liquidated damages as claimed in the amount of \$550.00 for a total of \$1,650.00, but I find that the landlord must account for the increased rental income of \$100.00 per month that will be received from May until August 31<sup>st</sup> when the fixed term tenancy agreement was to end and I reduce the landlord's claim by \$400.00 to reflect the additional income for that period. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$1,300.00. I order that the landlord retain the \$550.00 security deposit in partial satisfaction of this award and I grant the landlord a

monetary order under section 67 for the balance of \$750.00. This order may be registered 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: May 11, 2012.

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Residential Tenancy Branch

