



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD and FF

This application was brought by the landlord on April 12, 2012.

A request for an Order of Possession in the original application was withdrawn as the tenants had vacated the rental unit at about the time the landlord made application.

The landlord also sought a Monetary Order for unpaid rent, loss of rent, liquidated damages, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balanced owed.

Despite having been served with the Notice of Hearing served by registered mail on April 19, 2011 and again by email on April 20, 2012 (receipt of which was verified by the male tenant's email reply of April 21, 2012), the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. As authorized by section 71(2)(b) of the *Act*, I find that the tenants were sufficiently served for the purposes of the *Act*. Therefore, the hearing proceeded in their absence.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order as requested and authorization to retain the security and pet damage deposits in deposits in set off.

Claims in damages require that several factors be taken into account: the comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

### Background, Evidence and Analysis

This tenancy began on November 1, 2011 under a fixed term rental agreement set to end on October 31, 2012. Rent is was \$1,175 per month and the landlord holds a security deposit of \$587.50 and a pet damage deposit of \$500 paid on October 21, 2011 and October 28, 2011 respectively.

During the hearing, the landlord gave evidence that the tenants had advised by email on or about April 9, 2012 that they could not pay the rent for the month and that they were separating and vacating shortly. The tenants did not participate in completing the move-out condition inspection report despite having been invited to do so.

Some but not all of the keys were returned on April 21, 2012.

The landlord submitted copies of email exchanges between the parties, a copy of the rental agreement and numerous photographs and receipts in support of the claims submitted.

In addition, the landlord's photographs included evidence of damage to the rental unit including damage to the walls, carpets and doors, among others. The landlord makes no claim on the interior damage but submitted the photographs as evidence of the time needed to restore the unit to a rentable state.

The landlord claims and I find as follows:

**Rent for April 2012 - \$1,175.** As the tenant's left the tenancy in April 2012 without having paid rent for the month and without having given appropriate notice, this claim is allowed in full.

**Rent for May 2012 - \$1,175.** While the tenants did not occupy the rental unit in May 2012, the tenancy was for a fixed term to October 31, 2012 and the tenants are responsible for the rent for the month. I am satisfied that the landlord was unable to seek a new tenant for May occupancy due to the condition of the rental unit and acted reasonably to minimize the loss as required under section 7(2) of the Act. This claim is allowed in full.

**Liquidated Damages - \$550.** As set out in the rental agreement, the landlord claims this amount in liquidated damages. I find the amount to be a reasonable estimate of the administrative costs of finding a new tenant and the claim is allowed in full.

**Clean up back yard - \$500.** The amount claimed is the total of the pet damage deposit, revised by the landlord to a claim for four hours work to remove dense dog scat from the back yard as illustrated by photographic evidence. I allow \$100 on this claim.

**Refuse disposal from front yard - \$116.48.** This claim was supported by a paid receipt and photographs and is allowed in full.

**Filing fee - \$50.** As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

**Security and pet damage deposits – (\$1,087.50).** As the tenants' right to return of the security and pet damage deposits was extinguished under section 36(1) of the *Act* by their failure to participate in the move-out condition inspection, and as authorized by section 72(2)(b) of the *Act*, I order that the landlord shall retain the deposits in set off against the balance owed.

Thus, I find that the tenants owe to the landlord an amount calculated as follows:

Rent for April 2012	\$1,175.00
Liquidated Damages	550.00
Clean up back yard	100.00
Refuse disposal from front yard	116.48
Filing fee	<u>50.00</u>
Sub total	\$3,166.48
Less retained security and pet damage deposits – (\$1,087.50).	<u>1,087.50</u>
<b>TOTAL</b>	<b>\$2,078.98</b>

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$2,078.98**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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 09, 2012.

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Residential Tenancy Branch