



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes For the landlord: MNSD, MNR, MND, MNDC, FF  
For the tenant: MNSD, MNDC

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for authority to retain the tenant's security deposit, a monetary order for unpaid rent, for money owed or compensation for damage or loss and for damage to the rental unit and for recovery of the filing fee.

The tenant applied for a return of her security deposit, doubled and a monetary order for money owed or compensation for damage or loss.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit, for money owed or compensation for damage or loss and unpaid rent, authority to retain the tenant's security deposit and to recover the filing fee?

Is the tenant entitled to a monetary order for recovery of her security deposit and for money owed or compensation for damage or loss?

### Background and Evidence

This six month, fixed term began on November 1, 2011, monthly rent was \$550.00 and the tenant paid a security deposit of \$275.00 at the beginning of the tenancy. I heard undisputed evidence that the tenancy ended before the fixed term expired when the tenant moved out of the rental unit on February 27, 2012.

The rental unit is a single room occupancy, with the landlord renting out the bedrooms to different tenants in the lower suite, with the landlord's home being the upper suite.

### **Landlord's claim-**

The landlord's monetary claim is in the amount of \$3170.00, comprised of loss of revenue for March and April 2012, in the amount of \$1100.00 and damage to the hardwood floor, which may be replaced, for a cost of \$2070.00.

The landlord's relevant evidence included a letter from another tenant, a quote from a flooring company and the tenancy agreement.

In support of his application, the landlord submitted that he was entitled to a loss of rent revenue for March and April, due to the tenant's insufficient notice ending the tenancy. The landlord stated that the tenant called him on February 10 and said she wanted to move out, to which the landlord said that he would require notice of at least one full month.

Despite this, according to the landlord, the tenant gave her notice to vacate on February 15 and moved out by February 27, 2012.

The landlord stated that he was entitled to a floor replacement.

When questioned, the landlord stated there has been nothing done to the rental unit floor as of the day of the hearing, as he wanted to wait until the hearing.

When questioned further, the landlord stated that he advertised the rental unit every 2 days on a popular website; however, the landlord provided no proof of advertisement.

When questioned, the landlord confirmed that there was no move-in condition inspection report or move-out condition inspection report.

### **Tenant's claim-**

The tenant's monetary claim is in the amount of \$3400.00, which is comprised of \$60.00 for couch removal, \$1480.00 for reupholstering of her couch, \$100.00 for having to take a stress day off from work, rent compensation of January and February rent of \$555.00 each month and \$550.00 for recovery of her security deposit of \$275.00, doubled.

In support of her monetary claim, the tenant stated she is entitled to compensation of rent for the two months listed due to disturbances by the landlord's constant entries into the living area of the rental unit, despite her written requests to stop from so doing. The tenant submitted that the unauthorized and unannounced entries into the rental unit caused her a loss of quiet enjoyment.

According to the tenant, the landlord informed her that he could come into the rental unit anytime he wanted to and that if she didn't like it, she could move.

Additionally, the tenant stated she was compelled to move out due to the issues with water leaks and the presence of mould, which the landlord failed to remediate.

As to her claim for compensation for furniture, the tenant submitted that she looked out of the window and observed that her furniture was out in the rain, which caused the furniture to become ruined.

When questioned, the tenant confirmed that she has not had the furniture repaired as of the day of the hearing.

The tenant submitted that she gave the landlord her written forwarding address on February 27, 2012, the last day of the tenancy and the landlord has not returned her security deposit. As well, the tenant said that she has not agreed to any deductions.

In response the landlord agreed that he entered the rental unit "quite often;" however the landlord referred to this area of the rental unit as the "lobby," which he classified as any area other than the tenants' bedrooms.

The landlord stated that the furniture referred to by the tenant was not the tenant's furniture, but rather a former tenant's furniture and was there when she moved in.

The landlord agreed that the tenant's security deposit had not been returned.

### Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

In monetary claims, awards for compensation for damage or loss are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). A successful applicant cannot simply allege a violation of the Act, regulations or tenancy agreement by the other party, but rather, the applicant must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on both parties to prove damage or loss.

### **Landlord's Application**

**Loss of revenue for February and March 2012** - I accept that the tenant ended her tenancy early by vacating the rental unit as of February 27, 2012 in violation of the Act. The tenant was required to end this tenancy by giving the landlord written notice of at least 1 clear month, no earlier than the end of the fixed term, unless the tenant could show that the landlord had breached a material term of the tenancy agreement and had not corrected the problem within a reasonable timeframe.

The tenant argued that she was entitled to end this tenancy early due to the landlord's constant intrusions into the rental unit, which led to a complete loss of quiet enjoyment.

I accept the tenant's arguments. The landlord quite willingly acknowledged that he entered the rental unit's living area and kitchen quite often starting in January 2012, which he referred to as a "lobby," as was his right as the owner of the residential property.

In this case, the rental unit is comprised of the individual bedrooms of each tenant and the living, kitchen and bathroom, which was the common area to be shared only by the tenants residing in the rental unit. These areas are not part of a common area of the residential property for which the landlord may access at any time. The landlord may enter the rental unit only with proper notice as required by the Act.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Additionally Residential Tenancy Branch Policy Guideline 6 states that a breach of a tenant's right to quiet enjoyment occurs with frequent and ongoing interference by the landlord, such as entering the rental premises frequently, or without notice or permission.

On a balance of probabilities and due to the landlord's confirmation, I find the tenant has established that the landlord has substantially interfered with the tenant's right to quiet enjoyment, most particularly her right to privacy, by intruding on the tenant for frequent, unannounced visits into the basement suite.

I find that the landlord possessed no such right to enter the rental unit on the occasions that he did.

In reaching this conclusion, I was influenced by the landlord's confirmation of his unlimited entries beginning in January 2012, resulting in the landlord's continual wilful and egregious breach of the Act.

Due to the above, I find the landlord fundamentally breached the tenancy agreement and the Act. I find the only remedy was to end the tenancy.

Under sections 62 and 44(1)(f) of the Act, I order the tenancy ended effective on February 27, 2012, the date the tenant vacated the rental unit.

As I have found that the landlord's fundamental breach of the Act and the tenancy agreement caused the tenancy to end on February 27, 2012, I therefore find the landlord is not entitled to a loss of revenue for March and April 2012 and dismiss his monetary claim for \$1100.00, without leave to reapply.

As to the landlord's claim for a potential replacement of the flooring, I find the landlord submitted insufficient evidence that he has suffered a loss as he has yet to incur any expense. More importantly, I find the landlord failed to prove that the floor was damaged and if so, that the tenant damaged the floor by his failure to comply with the Act in offering the tenant at least 2 opportunities at the beginning and end of the tenancy and to complete a move-in or move-out condition inspection report.

In the absence of a condition inspection report depicting the state of the rental unit both before and after this tenancy, I find there to be insufficient evidence to meet the burden of proof establishing that the tenant committed damage or left the rental unit in an unclean state. A condition inspection could easily reveal such condition of the rental unit.

I therefore **dismiss** the landlord's claim for flooring damage of \$2070.00.

As I have dismissed the landlord's monetary claim, I likewise find he is not entitled to recovery of the filing fee and I dismiss his claim for \$50.00.

### **Tenant's Application**

**Rent compensation for January and February 2012-** On a balance of probabilities and with the landlord's confirmation that he entered the rental unit quite often, I find the tenant has established that the landlord has interfered with and deprived the tenant of her right to quiet enjoyment by frequent and unannounced entries into the rental unit.

I find the landlord's frequent and ongoing egregious contravention of the Residential Tenancy Act in dealing with the tenant has caused the tenant to have suffered a substantial loss of quiet enjoyment due to the landlord's intrusions, and therefore a subsequent loss in the value of the tenancy for that period. As a result, I find the tenant is entitled to compensation for that loss.

Residential Tenancy Policy Guideline 6 states: “in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.”

I note that the loss of quiet enjoyment was from the landlord's frequent and ongoing entries into the rental unit, even after requests from the tenant to refrain from so doing, which started in January 2012.

I therefore allow the tenant \$400.00 per month for the devaluation of the tenancy for the months of January and February 2012, for a total amount of \$800.00.

**Security deposit returned**-As I have dismissed the landlord's claim for loss of revenue and for flooring damage, I find that the landlord is not entitled to retain any portion of the security deposit and must return the security deposit to the tenant. I therefore find that the tenant has established a monetary claim of \$275.00.

**Double security deposit**-When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. In this case, the landlord applied to keep the security deposit in partial compensation of monetary claims for damage to the property as well as for potential lost revenue for March and April 2012. As the landlord's claim was not only for damage to the property, I find that the landlord complied with the requirement under section 38 to make an application to keep the deposit. The tenant is therefore not entitled to double recovery of the deposit, and I dismiss that portion of the tenant's application for a return of double her security deposit.

**Return of rent for February 2012**-Although the tenant did not apply for a return of her prorated rent for February, 2012, as I have found that the tenancy ended on February 27, 2012, due to the actions of the landlord, I find that the tenant, who paid rent for February 2012, is entitled to a return of a prorated portion of her rent for that month.

I therefore find the tenant has established a monetary claim in the amount of \$36.06, for prorated rent after the tenancy ended, on February 28 and 29. ( $\$550.00 \times 12 \text{ months} = \$6600.00$  yearly rent  $\div 366 \text{ days} = \$18.03$  daily rate  $\times 2 \text{ days} = \$36.06$ )

**Couch removal and upholstery of the couch**-The tenant submitted insufficient evidence that she owned the furniture or that she has suffered a loss in its repair as a quote is not sufficient evidence of a loss. I therefore dismiss her monetary claim of \$1540.00.

**Stress day off work**-The tenant submitted insufficient evidence that she suffered a loss due to stress at the hands of the landlord. I therefore dismiss her claim for \$100.00.

I find that the tenant has established a total monetary claim of \$1111.06, comprised of rent compensation of \$800.00 for January and February 2012, return of her security deposit of \$275.00 and \$36.06 for a return of her prorated rent for February 2012.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The tenant has established a monetary claim in the amount of \$1111.06 and is entitled to a monetary order in that amount.

I am enclosing the monetary order for \$1111.06 with the tenant's Decision. This monetary order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the landlord fail to comply with this monetary order.

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 28, 2012.

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Residential Tenancy Branch