



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD and FF

This application was brought by the landlord on May 2, 2012 seeking a monetary award for unpaid rent, damage or loss under the legislation or rental agreement, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

As a matter of note, while the rental agreement in dispute included two tenants, the male tenant left the tenancy earlier and the landlord was unable to serve him with the Notice of Hearing. Therefore, only the remaining female tenant could be named on the Monetary Order and the implications of joint and several liability were explained to her.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award as requested.

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 July 1, 2011 under a fixed term agreement set to end on June 30, 2012. Rent was \$2,300 per month and the landlord holds a security deposit of \$1,150 paid on July 1, 2011.

During the hearing, the parties gave evidence that the remaining female tenant had left the tenancy on March 2, 2012 without giving notice.

The landlord has submitted the rental agreement, numerous photographs and receipts as well as the move-in and move-out condition inspection reports (the latter not attended by the tenant), in support of the following claims on which I find as follows:

**Unpaid rent for March 2012 - \$2,300.** Given that the tenant left the fixed term tenancy early and without notice, I find that the landlord is entitled to recover the rent for March 2012 and the claim is allowed in full.

**Loss of rent for April, May and June @ \$2,300 per month.** The landlord stated that she had been unable to find a new tenant for the rental unit until July 1, 2012 and claims the balance of rent owed to the end of the fixed term agreement to June 30, 2012. Section 7 of the *Act* provides that a party to a rental agreement who suffers a loss due to the non-compliance of the other with the agreement is entitled to recover that loss from the non-compliant party. However, section 7(2) of the *Act* imposes a duty on the claimant to do whatever is reasonable to minimize the claimed loss. In the present matter, while the landlord stated that she advertised on Craigslist and on her corporate web site, I have no proof before me of the landlord's efforts to find new tenants. On the basis of photographic and verbal evidence, I accept evidence of the landlord that the rental unit was left in such poor condition that it would not have been possible to offer it for rent until considerable cleaning and repair work was complete. Therefore, I will allow the claim for loss of rent for April 2012, but not the remainder, and award \$2,300 on this claim.

**General cleaning, carpet cleaning, paint touch up, repairs and labour - \$1,200.**

The landlord has submitted a general receipt from the building owners. Claims included severe ink stains on one bedroom carpet, writing on walls, a broken closet door, two broken taps, and considerable refuse for disposal. The landlord stated the receipt had not been itemized in greater detail as the building owners had done the work themselves. The tenant stated that some of the damage had been caused by her co-tenant after she had left the rental unit, but as was explained, the principle of joint and several liability applies. Not having sufficient information to consider depreciation and taking into account the landlord's agreement that the rental unit was not pristine at the beginning of the tenancy, and taking into account the tenants responses, I award \$800 on this claim.

**Filing fee - \$100.** Having found substantial merit in the landlord's application, I find that she is entitled to recover the filing fee for this proceeding from the tenants.

**Security deposit – (\$1,150).** As authorized under section 72 of the *Act*, I hereby order that the landlord retains the security deposit in set off against the balance owed.

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

Rent for March 2012	\$2,300.00
Cleaning, paint, repairs and labour	800.00
Filing fee	<u>100.00</u>
Sub total	\$5,500.00
Less retained security deposit (No interest due)	- <u>1,150.00</u>
<b>TOTAL</b>	<b>\$4,350.00</b>

### Conclusion

In addition to authorization to retain the tenants' security deposit, the landlord's copy of this decision is accompanied by a Monetary Order for **\$4,350.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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: June 27, 2012.

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Residential Tenancy Branch