



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and unpaid rent, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted 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.

I note that the two tenants are referred to in the third person masculine singular due to the male tenant providing the testimony.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order, for authority to retain the tenant's security deposit and to recover the filing fee?

### Background and Evidence

According to the tenancy agreement, this one year, fixed term tenancy began on May 16, 2011. The oral evidence was that the tenancy actually ended on May 26, 2012, instead of at the end of the fixed term, which was to be June 30, 2012, monthly rent was \$1800.00, and the tenant paid a security deposit of \$900.00 at the beginning of the tenancy on or about June 16, 2011.

The landlord's monetary claim is in the amount of \$2135.68, which the landlord said is comprised of loss of revenue of \$900.00 for June 1-15, 2012, unpaid utilities of \$385.68, \$900.00, the amount of the tenant's security deposit and the filing fee of \$50.00.

The landlord included the tenant's security deposit as part of the claim for damage or loss, with no explanation as to how this was part of his alleged damage or loss. It explicably appeared that the landlord applied to simply keep the security deposit and obtain an additional amount for any alleged damage or loss.

I explained to the landlord that the tenant's security deposit was held in trust for the tenant during the tenancy, and that therefore this could not form part of a loss for him.

The landlord's relevant evidence included the tenancy agreement, bills for utilities for the rental unit, a notice from the tenant dated May 5, 2012, of their intent to move out at the end of May, with reasons stating why, and 3 warning letters to the lower tenants about their noise and smoking.

As to the monetary claim for unpaid utilities, the tenant agreed owing this amount; therefore it was no longer necessary to consider this claim.

As to the matter for loss of revenue for one half of June, the landlord submitted that the tenant did not provide a full month's notice of their intent to vacate.

When questioned, the landlord said they did not advertise or market the rental unit as they were introduced to the subsequent tenants by the present tenant, who did not want the rental unit until mid June. Additionally the landlord contended that he was out of town until May 12, 2012, although he left his adult son in charge of rental unit while away.

In response, the tenant said that they were forced to move from the rental unit due to the landlord's consistent failure to address the issue of the lower tenants' smoking and loud noises. Additionally, the tenant said that the lower tenants were ex-criminals, who brought unsafe visitors to the rental unit, jeopardizing his family's safety.

### Analysis

Based on the above, the testimony and evidence, and on 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, the landlord in this case, must establish all of the following:

1. That there was damage or loss by the claiming party;

2. That the alleged damage or loss was due to the respondent's breach of the tenancy agreement or the Act or from negligence;
3. Verification or proof of the loss; and,
4. That the claimant took all reasonable steps 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.

As to loss of revenue for June 2012, I accept that the tenants provided insufficient notice to end the tenancy early, by their failure to give notice in writing at least one clear month before the effective date of the notice to end.

However, a landlord cannot sit idly by before making a claim for loss. I find that the landlord's admission that he did nothing to advertise or market the rental unit to be an admission that the landlord failed to take any steps to minimize his loss, which is step 4 of his burden of proof.

I therefore dismiss the landlord's claim for loss of revenue for June 2012, in the amount of \$900.00, without leave to reapply.

As I have dismissed the landlord's claim for loss of revenue for June 2012, I have not addressed the tenant's assertion that the landlord's failure to provide them with quiet enjoyment of their rental unit was the cause of the early end to the tenancy.

As stated above, the tenant agrees that he owes the landlord for unpaid utilities; I therefore find the landlord has established a monetary claim for \$385.68.

As stated above, the landlord's monetary claim to simply keep the tenant's security deposit as compensation and apply for his actual damage or loss does not have merit or foundation. I therefore dismiss his claim for \$900.00, without leave to reapply.

I find the landlord's application had partial merit and I allow them recovery of a partial filing fee of \$25.00.

### Conclusion

I find the landlord has established a total monetary claim of \$410.68, comprised of unpaid utilities of \$385.68 and recovery of part of the filing fee of \$25.00.

I direct the landlord to retain \$410.68 from the tenant's security deposit of \$900.00 in satisfaction of his monetary claim.

I also grant the tenant a final, legally binding monetary order in the amount of \$489.32, which is the balance remaining after the landlord has deducted \$410.68.

I have enclosed the monetary order with the tenant's Decision. Should the landlord fail to pay the tenant this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement.

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: July 30, 2012.

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Residential Tenancy Branch