



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR, MNSD, MNDC, DRI, LRE, OLC, FF**

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an order of possession, a monetary order for unpaid rent, to retain all or part of the security deposit, compensation for damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied to dispute an additional rent increase, to suspend conditions on entry to the unit by the landlord, an order the landlord comply with the Act, compensation for damage or loss under the Act, return of the deposit and filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The tenant has vacated the unit; an Order of possession is not required.

As the tenant no longer resides in the unit the portions of his claim directly related to his possession of the unit: conditions of entry and orders to comply were not required.

The tenant confirmed that this application was in relation to the most recent fixed-term agreement signed with the landlord.

Issue(s) to be Decided

Has the landlord imposed an illegal rent increase and, if so, is the tenant entitled to compensation?

Is the tenant entitled to compensation for damage or loss?

Is the tenant entitled to return of the deposit paid?

Is the landlord entitled to compensation for unpaid June, 2012, rent?

May the landlord retain the deposit in partial satisfaction of the claim?

Is the landlord entitled to compensation for loss of rent revenue?

Is either party entitled to filing fee costs?

Background and Evidence

This tenancy commenced on May 1, 2012; it was a 2 month fixed-term that required the tenant to vacate on June 30, 2012. Rent was \$1,660.00 per month, due on the first day of each month. This agreement followed a previous fixed-term tenancy that required \$1,360.00 rent; which ended on April 30, 2012. A copy of both agreements was supplied as evidence, which showed the landlord is holding an \$830.00 deposit paid on February 1, 2011.

At the start of the hearing the tenant confirmed that his \$2,000.00 monetary claim was in relation to rent overpayment. During the hearing the tenant altered the claim and testified that \$600.00 of his claim was for rent overpayment and \$1,400.00 was in relation to sub-standard condition of the rental unit. No detailed calculation of the claim was submitted to the Residential Tenancy Branch or to the landlord.

The landlord claimed loss of June, 2012, rent in the sum of \$1,660.00. The parties agreed that the landlord has a cheque for June rent owed, but each time the landlord attempts to cash the cheque, bank personnel confirm that there are insufficient funds available. The landlord has retained the cheque, in the hope that it can be successfully negotiated at some point.

The tenant stated that he has over-draft protection and that the landlord should just deposit the cheque; the landlord does not wish to incur a \$45.00 NSF fee.

The tenant stated that when the landlord issued the current tenancy agreement he imposed a rent increase that was beyond that allowed by the legislation. The tenant has claimed compensation.

The tenant stated that the landlord failed to repair one of the 3 toilets in a timely manner, that it took 2 months to repair. The toilet caused sewage to flow onto the floor; that an exterior deck was slippery, causing the tenant to fall. The landlord refused to clean the carpets. The tenant stated this has caused a loss of value to the tenancy in the sum of \$1,400.00.

The landlord stated that he did have trouble making a repair to one of the 3 toilets in the unit and that it took 1 week to finalize the repair. The landlord agreed that some water did flow out of the tank of the toilet, but he denied that any sewage flowed from the toilet bowl.

The tenant confirmed that he did not vacate the unit on June 30, 2012, as required and that he over-held until late July 1, 2012. The landlord has claimed compensation for loss of revenue.

During the hearing the parties agreed to meet on the same date at 4:30 p.m. in order to complete a move-out condition inspection report.

During the hearing the tenant provided the landlord with his current mailing address.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The landlord has a cheque for June, 2012 rent, and I find, on the balance of probabilities, that he has been unable to negotiate the cheque, based on information provided by bank personnel. Therefore, I find that the landlord is entitled to compensation in the sum of \$1,660.00 for unpaid June, 2012, rent.

If the landlord is able to successfully negotiate the June, 2012, cheque, the portion of the monetary order for June rent, \$1,660.00, will not be enforceable.

I dismiss the tenant's claim. The tenant failed to provide a detailed calculation of his \$2,000.00 claim, as required on the application. At the start of the hearing the tenant indicated the monetary amount represented rent overpayment; then during the hearing the amount was altered. The lack of clarity in relation to the claim failed to allow the landlord an opportunity to fully understand the claim.

As the tenant over-held one day beyond June 30, 2012; I find that the landlord is entitled to compensation equivalent to 1 day rent, in the sum of \$54.57.

I find that the landlord's application has merit, and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$830.00, in partial satisfaction of the monetary claim.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,764.57.00, which is comprised of June 2012, rent, 1 day over-holding and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$830.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$934.57. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant's claim is dismissed.

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 05, 2012.

---

Residential Tenancy Branch