



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**MND, MNDC, MNSD, FF**

### Introduction

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

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 landlord submitted evidence to the Residential Tenancy Branch (RTB) on July 17, 2012. This evidence was given to the tenant via registered mail sent to the same service address used for Notice of the hearing.

The tenant testified that he did not receive a registered mail card for the evidence, that he has been away and that the card may have been removed by another occupant of the building.

Service by registered mail is rebuttable and, in the absence of evidence that the tenant did receive the evidence I find that the submission made to the RTB on July 17, 2012, was not served to the tenant and I have relied upon the oral submission of the landlord.

I have considered only those amounts claimed that were set out in the application and served to the tenant as part of the application.

### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$6,600.00 in unpaid rent?

Is the landlord entitled to compensation in the sum of \$2,200.00 in loss of rent revenue?

Is the landlord entitled to compensation in the sum of \$2,865.70 for damage to the rental unit?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on September 10, 2010, it was a 1 year fixed-term ending September 30, 2011. Rent was \$2,200.00 per month, due on the first day of each month. A deposit in the sum of \$1,100.00 was paid on September 13, 2010. A copy of the signed tenancy agreement was supplied as evidence.

During the hearing the tenant did not dispute the following, claimed by the landlord:

- \$6,600.00 rent owed from June to August, 2012, inclusive;
- Water bill costs to August 23, 2012, in the sum of \$323.20; and
- Carpet cleaning costs in the amount of \$413.22.

The balance of the landlord's claim included:

Loss of September, 2011 rent revenue	2,200.00
Hydro reconnection cost	28.38
Additional carpet cleaning	300.00 estimate, paid 336.00
Linoleum replacement	774.17
Miscellaneous damages	490.00
Further damages	250.00
<b>TOTAL</b>	<b>2,245.19</b>

A move-in condition inspection report was completed at the start of the tenancy.

The tenant acknowledged receipt of a 10 Day Notice to End Tenancy on August 12, 2012. The tenant vacated the unit on the effective date of the Notice, August 19, 2012.

The landlord and tenant met on August 31, 2012, to complete the move-out condition inspection. The inspection began and immediately there was some disagreement; the tenant left the unit and did not participate in the balance of the inspection. The landlord completed the first few sections of the move-out inspection report submitted as evidence. The landlord left the tenant a voice mail message asking they meet again on September 5, 2012; the tenant did not respond or attend for the 2<sup>nd</sup> inspection. The landlord submitted a copy of a local daily newspaper advertisement placed on 8 occasions, commencing August 20, 2011. The landlord did not seek additional rent and did receive some limited interest in the home. The landlord could not locate a tenant for

September 1, 2012 and has claimed loss of September 2011, rent revenue; the final month of the fixed-term.

During the tenancy the tenant allowed his hydro account to be disconnected. The landlord submitted a copy of a January 31, 2012, BC Hydro bill which showed a payment made on November 4, 2012, in the sum of \$28.38. The landlord paid the November bill that was issued as the result of the account termination.

The initial carpet cleaning was completed in December, 2011. The unit was vacant until June 2012. The carpets were cleaned again in June 2012 at a cost of \$336.00, as they were still stained. The invoice supplied as evidence for the December 2011 cleaning indicated that the carpets were heavily stained. Photographs supplied by the landlord showed stained and dirty carpets. The landlord's application included a claim for an estimated \$300.00 in additional carpet cleaning costs.

The landlord submitted a photograph of the kitchen linoleum that had been damaged. The landlord supplied a copy of the invoice for new flooring installed in December 2011. The tenant agreed that the landlord had delivered a new dishwasher and that the landlord had not installed the machine. The landlord gave the tenant permission to install the new dishwasher. When the tenant pulled out the old machine the legs caught on the flooring and caused damage. The tenant said he had not been negligent and that he was completing this work with the landlord's consent. The flooring was originally installed in 2003.

The landlord supplied a list of additional items that required maintenance, totaling \$301.09. Repairs included a handrail, a bi-fold door, clean and paint the bathroom and repairs to a gate and fence. Handwritten notes indicated that on November 23, 2011 a \$200.00 payment was made and that a 2<sup>nd</sup> \$200.00 payment was made on April 23, 2012 for the repair costs.

The tenant does not believe he should be held responsible for advertising costs and loss of September, 2011 rent revenue as his tenancy had been ended by the landlord. The tenant had a friend living in the home who was talking with the landlord about renting the house; however, a tenancy was not arranged.

The tenant said he did not terminate his BC Hydro account; he called the company and asked to have the account taken out of his name, as he was moving.

The tenant agreed that the basement carpets were very dirty, but he did not agree with additional cleaning that occurred 6 months later. The tenant said that he did not know if someone else had lived in the unit and caused further damage to the carpets.

The tenant acknowledged placing the bi-fold door in the basement; it was too narrow to allow hangers to be used; the door was not damaged. The tenant stated that he hired someone who completed \$1,200.00 of cleaning to the unit; however, verification of this

expense was not provided. The tenant stated that the entry handrail had been damaged at the start of the tenancy.

The tenant confirmed that he did not provide the landlord with his written forwarding 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.

Based on the acknowledgement of the tenant I find, pursuant to section 67 of the Act that the landlord is entitled to compensation as follows:

- \$6,600.00 rent owed from June to August, 2012, inclusive;
- water bill costs to August 23, 2012, in the sum of \$323.20; and
- carpet cleaning costs in the amount of \$413.22.

The tenancy ended due to a breach of the terms of the tenancy agreement, when the tenant failed to pay rent that was owed. I find that the landlord made attempts to mitigate the loss of September, 2011 rent by advertising the unit and attempting to locate a new occupant. I have rejected the tenant's submission that an eviction Notice relieved him of the responsibility for the fixed-term agreement; the tenant had signed an agreement with the landlord that required payment of rent until the end of the fixed-term. The landlord attempted to mitigate the loss by advertising the unit, without success.

Therefore, I find that the landlord is entitled to advertising costs and the loss of September, 2011, rent revenue.

There was no evidence before me that the tenant failed to pay a BC Hydro bill that resulted in termination of the service. The amount paid by the landlord in November, 2011, was not supported by any evidence that the tenant had requested termination of the service. Therefore, I find that the claim for BC Hydro reconnection is dismissed.

The landlord had additional carpet cleaning completed ten months after the tenancy ended. I have accepted the tenant's affirmed testimony that he did not receive the additional evidence sent via registered mail. Even if the invoice had been received by the tenant I find that a cost incurred so long after the tenancy ended is difficult to accept as the tenant's responsibility. Further, the carpet invoice issued in December indicated that the carpet showed signs of heavy wear and tear, indicating that the carpet may

have been beyond its expected life span. Therefore, I find that the claim for additional carpet cleaning is dismissed.

The landlord did not dispute that she allowed the tenant to install the dishwasher that had been delivered to the property. I find that when the landlord agreed to have the tenant install the dishwasher she was also accepting any risk of damage that might occur during installation. The tenant did not intentionally damage the flooring, and admits that it did happen as a result of the new dishwasher installation. Further, the flooring was at least 9 years old. Residential Tenancy Branch policy suggests that the useful lifespan of tile flooring is ten years.

The bi-fold doors are original and I find are well beyond their useful lifespan.

There was no notation on the condition inspection report that the handrail was missing at the start of the tenancy; and the tenant's refusal to participate in the move-out inspection was voluntary on his part. I find on the balance of probabilities that the hand rail was damaged by the tenant or a guest and that the landlord is entitled to a nominal amount for repair in the sum of \$25.00

In relation to the balance of the miscellaneous damages claimed, the landlord did not supply an invoice that set out a detailed breakdown of the costs claimed. The invoice indicated a claim for items such as fencing and gate repair; which are the responsibility of the landlord to maintain. In the absence of a breakdown of the costs and evidence that the tenant caused damage, I find that the claim for miscellaneous and further damages is dismissed.

	Claimed	Accepted
Advertising cost	187.13	187.13
Hydro reconnection cost	28.38	0
Additional carpet cleaning	300.00 estimate, paid 336.00	0
Linoleum replacement	774.17	0
Miscellaneous damages	490.00	25.00
Further damages	250.00	0
<b>TOTAL</b>	<b>4,229.68</b>	<b>2,387.13</b>

Therefore, I find that the landlord is entitled to compensation for unpaid rent, loss of rent revenue and damages in the sum of \$9,723.55. The balance of the claim is dismissed.

I find that the landlord's application has merit, and I find 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 \$1,100.00, in partial satisfaction of the monetary claim.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$9,823.55, which is comprised of \$6,600.00 in unpaid rent to August, 2011; \$2,200.00 loss of rent revenue; \$2,387.13 in damage and \$100.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The balance of the claim is dismissed.

The landlord will be retaining the tenant's security deposit in the amount of \$1,100.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$8,723.55. 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.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 31, 2012.

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Residential Tenancy Branch