



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, for unpaid rent, to retain the security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on June 20, 2012. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

The Tenant previously applied for dispute resolution regarding this tenancy, file # 792837 and a hearing was conducted on June 27, 2012. At that hearing the Tenant was awarded monetary claim, the Notices to End the Tenancy were cancelled and the tenancy was ordered to continue as specified by the tenancy agreement.

### Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for damage and if so how much?
3. Is there unpaid rent and if so how much?
4. Is the Landlord entitled to compensation for unpaid rent and if so how much?
5. Is the Landlord entitled to retain the Tenants' security deposit?

### Background and Evidence

This tenancy started on January 15, 2012 as a month to month basis. Rent was \$900.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$450.00 on January 15, 2012. The Landlord said this tenancy ended in September, 2012 after he waited 30 days after the unit was abandoned on July 3, 2012.

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The Landlord said contrary to the previous decision the Tenants did not pay the June, 2012 rent of \$900.00 nor the July, 2012 rent of \$900.00. The Landlord continued to say that the Tenant came back to the property on July 3, 2012 with a Bailiff to take possession of the rental unit with the Order of Possession they had received in the previous decision. The Landlord said his claim for unpaid rent for June and July, 2012 is supported by the two 10 Day Notices to End Tenancy for Unpaid rent that he served the Tenants. The Landlord said he is claiming unpaid rent of \$1,800.00 in total.

The Landlord said he did not complete a move in or move out condition inspection report, but the unit was brand new and it had never been occupy. The Landlord said his total damage claim is \$3,160.08. His claim includes repairs to the floors, walls and doors of the rental unit. The estimate that the Landlord submitted has \$857.00 in materials, \$1,964.50 in labour and \$338.58 in tax.

With respect to the Landlord's damage claim of \$3,160.08 the Landlord said all the work has not been completed yet and he only submitted an estimate of the costs to repair the damages not actual receipts for the completed work.

The Landlord said he purchased the house and took possession of the house and rental unit on January 15, 2012. The Landlord said both his house and the rental unit were brand new and never occupied before. The Landlord said this is his first time as a landlord and it has been very costly and frustrating. At this point the Landlord said he is unable to proof the condition of the rental unit at the start of the tenancy and he said he understands that this is required to establish a claim for damages to a rental unit.

The Landlord said he did contact the Tenant many time by text messaging to do a move out in condition inspection, but the Tenant did not return his texts and as a result no move out condition report was done.

## Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the Landlord's testimony that the Tenants did not pay rent for June and July, 2012 in the total amount of \$1,800.00. The Landlord supported his claim by submitting 10 Day Notices to End Tenancy for Unpaid rent for June, 2012 and July, 2012. The Tenants did not have the right under the Act to withhold part or all of the rent for June, 2012 or July, 2012, therefore I find in favour of the Landlord for the unpaid rent of \$900.00 for each month of June and July, 2012 in the total amount of \$1,800.00.

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

As the Landlord said he is unable to establish the condition of the rental unit at the start of the tenancy and there is no move out inspection report completed by the Landlord and the Tenant, I find that the Landlord has not established proof that the Tenant damaged the rental unit.

As well for a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

As the Landlord has not completed the repairs to the rental unit the Landlord has not established the amount of his loss. If the Landlord cannot prove the amount of his loss and the Landlord cannot prove the actual damages then the claim will not be successful. Consequently I find the Landlord has not proven his loss or the amount of his loss and as a result I dismiss the Landlord's damage claims with leave to reapply.

As the Landlord has been partially successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears: (\$900.00 X 2)	\$1,800.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,850.00
Less	Security deposit	\$ 450.00	
	Subtotal:		\$ 450.00
	Balance owing		\$1,400.00



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## Conclusion

A Monetary Order in the amount of \$1,400.00 has been issued to the Landlord for unpaid rent and the filing fee for this proceeding. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Landlord's damage claim is dismissed with leave to reapply.

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*.

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Dispute Resolution Officer