



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD and FF

This application was brought by the landlord on June 14, 2012 seeking a monetary award for damage to the rental unit, damage or loss under the legislation or rental agreement, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

At the commencement of the hearing, the attending tenant was permitted to make an opening submission at his request and which I addressed as follows:

The attending tenant was served with the Notice of Hearing and the landlord's evidence in person by a bailiff on September 6, 2012 and did not have time to prepare a response. In fact, the tenants were individually served by registered mail sent on June 15, 2012 at an address provided to the landlord and one that remains their residence. If the tenants did not accept the registered mail or pick it up on the notice of registered mail, they are deemed under section 90(a) of the Act to have been served on June 20, 2012. In any case, the personal service made by the bailiff on September 6, 2012 meets the requirement for service of evidence five days before the hearing. Therefore, I found no reason to delay the hearing on the question of service.

The tenant said he called the landlord in June 2012 and no mention was made of the pending action. The landlord had diarized having called the tenant on June 2, 2012 to ask about the rent due on June 1, 2012 and the tenant hung up. She stated she had received four calls from his telephone between June 22 and June 26, 2012. On the first three, the caller hung up when she answered and on the last, the tenant asked if there was any mail for him. I see no significance in whether the landlord mentioned the pending hearing in that conversation.

The tenant stated that the rental agreement was one sided, and presumably, unenforceable. The rental agreement appears to be on the standard ROMS BC form

and the tenant did not specify any particular clauses that would nullify it. I find the agreement is enforceable.

The tenant challenges the right of the Residential Tenancy Branch to hear this dispute and believes that only the Provincial Court of British Columbia can take jurisdiction and that the landlord must be responsible for all costs if the landlord initiates an action in through the Court. I would refer the tenant to the *Residential Tenancy Act* for clarification on jurisdiction which I accept without reservation in the present matter.

The tenant made explanation that his family had vacated the rental unit because illness or injury had impacted his ability to work and he needed to find more affordable housing.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for all or part of the claims submitted and, if so, in what amounts?

#### Background, Evidence and Analysis

This tenancy began on August 1, 2011 under a fixed term rental agreement set to end on July 31, 2012. Rent was \$1,735 per month and the landlord holds a security deposit of \$847.50 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that on June 2, 2012, she found that the tenants had abandoned the rental unit three months before expiry of the fixed term agreement without having given notice or returning the keys.

The landlord submitted numerous photographs, the rental agreement, the move-out condition inspection report completed without the tenants' participation, and receipts in support of the landlord's claims, on which I find as follows:

**Cost of bailiff and registered mail service, photographs - \$300 +.** As noted during the hearing, there is no provision within the legislation that gives authority to order that a

party to dispute resolution be compensated for costs of service and evidence preparation. These claims must be dismissed.

**Unpaid rent for June 2012 - \$1,735.** Section 26 of the Act provides that tenant's must pay rent when it is due and as stated in the rental agreement. This claim is allowed in full.

**Loss of rent - \$280.** The landlord gave evidence that, in an effort to minimize the loss for both the landlord and tenant in a softened market, she had contract with new tenants to take over the rental unit on July 1, 2012 at a rented reduced by \$140 per month. I note that if the landlord had not done so, the tenants could have been liable for the full loss of rent for the two months to the end of the fixed term tenancy, a potential claim of \$3,470. Therefore, I find that the landlord has acted reasonably to minimize the loss as required under section 7 of the Act, and the claim for the differential between the subject tenancy and the new tenancy is allowed in full.

I would further note that the landlord has waived the larger liquidated damages clause of the rental agreement and claims only actual loss in this and other claims.

**General cleaning - \$275.** This claim is supported by photographic evidence and records of staff work on the unit and it is allowed in full.

**Remove garbage from rental unit - \$25.** Allowed in full.

**Carpet cleaning - \$112.** – This claim is supported by a third party commercial receipt for \$100 for cleaning plus 12 percent HST. It is allowed in full.

**Garbage hauling - \$100.80.** This claim is supported by a receipts and it is allowed in full.

**Locks rekeyed - \$70.** This cost was necessitated by the tenants' failure to return the keys to the rental unit and it is allowed in full.

**Replace burned out or missing light bulbs - \$5.** This claim is allowed.

**Advertising - \$168.27.** The landlord submitted total advertising billings for the material period of \$1,009.59 and stated as six units were available in the rental building at the time, she charged one-six of the expense against the subject tenants. I find that to be a fair and reasonable allocation, again considering that the landlord has claimed the lesser actual costs rather than the larger liquidated damages. The claim is allowed.

**Filing fee - \$50.** As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenant.

**Security deposit – (\$847.50)** – As authorized under section 72 of the Act, I hereby order that the landlord retain the security deposit in set off against the balance owed.

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

Unpaid rent for June 2012	\$1,735.00
General cleaning	275.00
Remove garbage from rental unit	25.00
Carpet cleaning	112.00
Garbage hauling	100.80
Locks rekeyed	70.00
Replace burned out or missing light bulbs	5.00
Advertising	168.27
Filing fee	<u>50.00</u>
Sub total	\$2,821.07
Less retained security deposit (No interest due)	<u>- 847.50</u>
<b>TOTAL</b>	<b>\$1,973.57</b>

### Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for, **\$1,973.57**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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: September 14, 2012.

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Residential Tenancy Branch