



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR, MND, MNDC, FF

### Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

As the tenant, her husband and son were vacating their residence elsewhere and planning a trip abroad, in approximately late September 2011 the landlord made storage space available to the tenant in her garage. With the passage of time, the tenant also undertook to store some of the family's possessions in the landlord's basement.

When the tenant and her family returned from abroad, as she had no alternate accommodation in place she and her family moved into the landlord's unit on or about February 7, 2012. What began as a temporary arrangement evolved into a month-to-month tenancy for which no written tenancy agreement was created. The landlord accepted monthly payment from the tenant in the amount of \$800.00, on or about the 7<sup>th</sup> day of each month. As the initial understanding between the parties was that the tenant's stay would be temporary until the end of February, no move-in condition inspection report was completed. Neither was a security deposit collected. As the length of the tenant's stay gradually became more extended, while she claimed to be searching for permanent accommodation, the landlord proposed an increase in rent by \$200.00 to \$1,000.00 per month. However, the tenant declined to sign a tenancy agreement prepared in this regard by the landlord. Over time, considerable animosity developed between the parties.

In response to applications for dispute resolution by both parties, a hearing was held on June 18, 2012. A decision was issued by the same date, pursuant to which an order of possession was issued in favour of the landlord to be effective June 30, 2012.

Thereafter, the tenants vacated the unit on June 30, 2012. No move-out condition inspection report was completed.

The thrust of the landlord's application concerns compensation sought for cleaning and repairs to miscellaneous damage allegedly caused by the tenants, in addition to compensation for a breach of the right to quiet enjoyment and recovery of the filing fee.

### Analysis

Based on the documentary evidence and testimony of the parties, the various aspects of the landlord's claim and my findings around each are set out below. The attention of the parties is also drawn to specific sections of the Act and the Residential Tenancy Policy Guidelines, which are particularly relevant to the circumstances of this dispute.

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

\$600.00: *combined total of additional rent for April, May & June (3 x \$200.00).* The landlord has not included February & March in this aspect of the application; the landlord considers that \$800.00 per month was sufficient, in light of the understanding that the tenant's stay in the unit would be temporary. However, as the stay lengthened the landlord became concerned about additional demand on utilities, as well as enhanced wear and tear on the unit. As earlier noted, the landlord's proposal to address these concerns by way of a \$200.00 monthly rent increase from \$800.00 to \$1,000.00 was declined by the tenant.

Section 12 of the Act provides that **Tenancy agreements include the standard terms**, in part as follows:

12 The standard terms are terms of every tenancy agreement

(b) whether or not the tenancy agreement is in writing.

Section 14 of the Act addresses **Changes to tenancy agreement**, and provides in part:

14(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirement for agreement under subsection (2) does not apply to any of the following:

(a) rent increase in accordance with Part 3 of this Act;

Section 42 of the Act addresses **Timing and notice of rent increases**, and provides in part:

42(1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

In the absence of a written tenancy agreement, I find that the landlord's initial acceptance of \$800.00 in payment for rent established the monthly rent at that level. As the parties were unable to mutually agree to an increase in this amount, and as the tenancy had not reached the threshold of 12 months, I find that the landlord has failed to establish entitlement to an increase in rent during the term of tenancy. Accordingly, this aspect of the application is hereby dismissed.

\$2,000.00: loss of rental income for July & August (2 x \$1,000.00). The landlord testified that new renters were found for the unit effective September 1, 2012, and that advertising for new renters commenced very shortly after the tenant vacated the unit on June 30, 2012. The landlord takes the position that had a previous agreement with other potential renters ("students") not been cancelled by the landlord after the stay of these tenants became increasingly lengthy, the landlord's rental income would have been at least \$1,000.00 for July and August.

I find that as the landlord cancelled the agreement with other potential renters by returning their \$600.00 security deposit, as opposed for example, to initiating formal proceedings for ending the subject tenancy earlier, the landlord has not established

entitlement to the loss of rental income claimed. This aspect of the application is, therefore, hereby dismissed.

\$2,400.00: storage @ \$300.00/month x 8 months (January to August). The landlord argues that the readiness of a family friend to pay \$300.00 per month for storage space in the landlord's garage, entitles the landlord to claim this amount for storage space in the garage used by the tenants. Evidence submitted by the landlord includes a letter written by the family friend in which she refers to a "verbal agreement" with the landlord to pay \$300.00 per month for the period from March 15 to August 31, 2012. The family friend was not present at the hearing to provide affirmed testimony.

I find on a balance of probabilities that the landlord has established entitlement to a claim limited to **\$300.00\***, which is calculated on the basis of \$50.00 per month for each of the 6 months from January to not later than June 2012, inclusive (6 x \$50.00).

\$521.92: cleaning. Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

Notwithstanding that what became a month-to-month tenancy was not initially entered into as a tenancy but, rather, as a short term stay, there are no comparative results of move-in and move-out condition inspection reports in evidence. However, a receipt has been entered into evidence showing that the cost claimed is comprised of labour and "product." Partly in consideration of the animosity between the parties at the end of tenancy, I find on a balance of probabilities that the landlord has established entitlement limited to **\$200.00\***.

\$2,100.00: estimated cost of bathtub liner, including labour for installation. A more recent estimate was submitted late into evidence; the updated estimate totals **\$4,366.88** for the entire replacement of the bathtub, as it was suggested that installation of a bathtub liner would not be adequate.

In addition to the absence of move-in and move-out condition inspection reports, I find that there is insufficient evidence to support the landlord's claim that the necessity to proceed with either of these proposals is the direct result of excessive wear and tear during a 5 month tenancy. The landlord also acknowledges that the bathtub is several years old. Further, while the landlord has not actually undertaken any bathtub repairs / bathtub liner replacement / bathtub replacement, new tenants now reside in the unit and

presumably make full use of the bathtub. In short, this aspect of the application is hereby dismissed.

\$130.44: labor & materials for repairs to walls. There is conflicting testimony in regard to the condition of the unit at the start of the tenancy, compared to the condition of the unit at the end of tenancy. In the absence of move-in and move-out condition inspection reports, this aspect of the application is hereby dismissed.

\$50.00: repair to kitchen drawer. For reasons identical to those set out immediately above, this aspect of the application is hereby dismissed.

\$54.99: keyed door knob &

\$59.99: deadbolt knob combo pack &

\$74.42: deadbolt & lock change.

Further to the conflicting testimony around what was replaced and what was ultimately taken or returned, there are no comparative results available in evidence from move-in and move-out condition inspection reports. In the result, these 3 aspects of the application are hereby dismissed.

\$196.00: repair to dent on vehicle &

\$100.00: repair to paint on vehicle.

I find that these 2 aspects of the application are more properly directed toward the police / ICBC, and where it concerns the jurisdiction of the Act they are both hereby dismissed.

\$168.00: repairs to exterior stucco. The tenant acknowledges drilling holes in the exterior stucco but then repairing them prior to vacating the unit. While evidence submitted by the landlord includes an estimate of repairs to damage, the landlord has not presently proceeded to have any professional repairs made. I find on a balance of probabilities that the landlord has established entitlement limited to **\$50.00\***.

\$380.00: cleaning oil stains on driveway / ball marks on garage door. While the tenant acknowledges responsibility for oil stains on the driveway, the landlord has not presently undertaken to have the stains removed. There is conflicting testimony in relation to the difficulty in removing ball marks (stains) from the garage door. The amount claimed arises from a quote obtained by the landlord. In consideration of all the foregoing I find on a balance of probabilities that the landlord has established entitlement limited to **\$150.00\***.

\$500.00: breach of the right to quiet enjoyment. Section 28 of the Act speaks **Protection of tenant's right to quiet enjoyment.** Further, Residential Tenancy Policy Guideline # 6 addresses "Right to Quiet enjoyment," and provides in part:

A landlord does not have a reciprocal right to quiet enjoyment.

Following from the above, this aspect of the application is hereby dismissed.

\$50.00: filing fee. As the landlord has achieved a limited measure of success with this application, I find that the landlord has established entitlement to recovery of \$25.00\*.

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$725.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

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 07, 2012.

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Residential Tenancy Branch