



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MND, MNR, MNSD, MNDC, FF

### Introduction

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

The landlord provided a copy of a typed document entitled Certificate of Service, issued on October 31, 2012. R.D. certified that on October 30, 2012, at a specific address in Victoria BC, he personally served the tenant copies of the Application for Dispute Resolution and Notice of Hearing package, plus thirteen pages of evidence for this hearing.

The landlord stated that the tenant did not provide a forwarding address and that in September the tenant's employer told them he was out of the country until the end of October, at which point the tenant was able to be served.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary Order for damage to the rental unit, unpaid rent, damage or loss under the Act in the sum of \$1,337.80?

Is the landlord entitled to retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The 1 year, fixed-term tenancy, commenced on June 1, 2011. Rent was \$780.00 per month, plus parking in the sum of \$15.00, due on the first day of each month. A deposit in the sum of \$390.00 was paid on May 20, 2011.

The landlord has made the following claim for compensation:

Loss of January 2012 rent revenue	\$750.00
Suite cleaning	132.00
Drapery cleaning	40.00
Carpet cleaning	100.80
Liquidated damages	300.00
<b>TOTAL</b>	<b>\$1337.80</b>

The landlord provided copies of the following documents as evidence:

- The tenancy agreement signed by the parties;
- A notice to vacate effective the last day of January 2012, completed by the tenant and date stamped by the landlord on December 5, 2011; the tenant gave the reason that he wanted a 2 bedroom home;
- A move-in and move-out condition inspection report;
- 3 invoices issued on January 2, 2012, for cleaning and drape cleaning, completed by 3 different staff members, in the sum claimed by the landlord;
- A carpet cleaning receipt issued January 3, 2012; and
- A tenant ledger

The landlord discovered that the tenant vacated the unit at the end of December, 2011; the keys were left in the unit. The tenant did not provide a forwarding address and could not be reached at the telephone number he had supplied to the landlord.

On January 3, 2012, the landlord completed the inspection report; the report indicates the inspection occurred on December 3, 2011. The report indicated the need for cleaning in all areas of the unit, with the exception of the bedroom.

The landlord was unable to locate new occupants for the unit during the month of January; new occupants were located for February 2012.

The tenancy agreement included a clause that required the tenant to pay liquidated damages should the tenancy be ended before the original term set out in the agreement; May 31, 2012.

The application indicated rent claimed was \$750.00; the tenancy agreement indicated rent was \$780.00 per month, plus parking.

### 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.

Despite having been served with notice of this hearing; the tenant did not attend the hearing to dispute the landlord's claim.

Based on the evidence before me I find, pursuant to section 44 of the Act, that the tenancy ended on December 31, 2012, the end of the last month rent was paid and when the tenant vacated.

As the tenant could not end the fixed-term tenancy for the reason he cited I find that the landlord is entitled to loss of rent revenue for January 2012 in the sum of \$780.00. The landlord discovered the vacancy too late to be expected to install new occupants for January 1, 2012.

Based on the condition inspection report completed and the invoices supplied indicating the items cleaned and time spent, I find that the landlord is entitled to the cost incurred for cleaning and drapery cleaning in the amount claimed.

Based on the carpet cleaning invoice I find that the landlord is entitled to compensation for that cost.

As the tenant no longer parked at the unit I dismiss the claim for January 2012 parking.

The tenant signed a tenancy agreement that imposed a \$300.00 liquidated damages clause, should the tenancy be ended prior to the end of the fixed term. As the tenant gave notice and vacated the unit in breach of the fixed-term, I find that the landlord is entitled to liquidated damages as claimed.

	Claimed	Accepted
Unpaid January 2012 parking	15.00	0
Suite cleaning	132.00	132.00
Drapery cleaning	40.00	40.00
Carpet cleaning	100.80	100.80
Liquidated damages	300.00	300.00
<b>TOTAL</b>	<b>\$1367.80</b>	<b>\$1322.80</b>

I find that the landlord is entitled to retain the deposit in the sum of \$390.00, in partial satisfaction of the claim.

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

Based on these determinations I grant the landlord a monetary Order for \$982.80. 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.

There was no evidence before me in support of a claim for unpaid rent; only loss of rent revenue.

Conclusion

The landlord is entitled to compensation in the sum of \$1,322.80.

The landlord may retain the deposit in partial satisfaction of the claim.

The landlord is entitled to filing fee costs.

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: November 28, 2012.

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Residential Tenancy Branch