



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MND, MNR, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, unpaid rent, and damage to the rental unit, for authority to retain the tenants' security deposit and for recovery of the filing fee.

The landlord's agents appeared; the tenants did not appear.

The landlord testified that they served each tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on August 24, 2012. The landlord supplied evidence of the tracking numbers of each of the registered mail envelopes.

I find the tenants were served in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order, for authority to retain the tenants' security deposit and to recover the filing fee?

### Background and Evidence

This tenancy began on February 6, 2011, ended on August 10, 2012, when the tenants vacated the rental unit, monthly rent was \$1150.00, and the tenants paid a security deposit of \$575.00 at the beginning of the tenancy.

The landlord's claim is in the amount of \$2140.65, which includes unpaid rent for August 2012 in the amount of \$1150.00, carpet replacement of \$495.21, suite cleaning of \$100.00, repair of a broken window for \$144.64, blind cleaning for \$100.80, touch up painting for \$125.00 and counter repair for \$25.00.

The landlord's relevant evidence included receipts for the costs claimed, the condition inspection report, the tenancy agreement, copies of photographs of the rental unit, and a Notice to Vacate signed by the tenant, dated July 11, 2012. The effective move out date on the Notice listed by the tenant was August 31, 2012.

The landlord testified that although the tenants' Notice stated that they would vacate on August 31, 2012, the tenant informed the landlord that he had found another home, to move into on August 1, 2012. The tenant said he wanted to move out sooner than the date listed on the Notice, and then failed to pay rent for August.

The landlord said that they attended the rental unit on August 10, 2012, along with the male tenant, for a move out inspection, but that the rental unit was filthy. The tenant requested additional time to clean, but failed to do so. The landlord also submitted that although the tenant attended the move out inspection, he refused to sign the condition inspection report.

The landlord also said the rental unit required cleaning and repair beyond the tenants' reasonable wear and tear; additionally the carpet was ruined and required replacement. The landlord is asking for 50% of the replacement cost, as the carpet was 5 years old at the time of replacement.

The landlord pointed to the condition inspection report as proof of the condition of the rental unit.

### Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In the absence of the tenants who failed to attend to the hearing, the landlord's evidence will be preferred.

*Unpaid rent* -Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

In this case the tenants gave sufficient notice, but then failed to abide by those terms, requesting to leave earlier than August 31, 2012. I find the landlord proved that the tenants were in possession of the rental unit on August 1, 2012, and failed to pay rent.

From the tenancy agreement I find that rent was due on the 1<sup>st</sup> of each month and as such, I find the tenants have violated the *Act* and tenancy agreement and are responsible for the payment of rent for the month of August 2012. I therefore find the landlord has proven their claim for \$1150.00.

*Suite cleaning, touch-up painting, and blind cleaning* -I find the landlord submitted sufficient evidence that the rental unit required cleaning, including the blinds, and touch-up painting and of their loss as a result of the tenants' failure to leave the rental unit reasonably clean and in the required condition and I therefore find the landlord has proven their claim for \$325.80.

*Carpet replacement* -I find the landlord has submitted sufficient evidence that the tenants damaged the carpet to the extent a replacement was required and that they were reasonable in their request for 50% of the replacement costs. I therefore find the landlord has proven their claim for \$495.21.

*Broken window and counter repair*-I find the landlord submitted sufficient evidence that the tenants broke the window in the rental unit and are responsible for its replacement. I there find the landlord has proven their claim for \$169.64.

I find the landlord is entitled to recovery of the filing fee of \$50.00.

Due to the above, I find the landlord has proven a total monetary claim in the amount of \$2190.65, comprised of unpaid rent for August 2012 in the amount of \$1150.00, suite cleaning, blind cleaning and touch-up painting for of \$325.80, carpet replacement of \$495.21, broken window and counter repair for \$169.64, and recovery of the filing fee of \$50.00.

### Conclusion

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$575.00 in partial satisfaction of their monetary award and I grant the landlord a final, legally binding monetary order in the amount of \$1615.65.00 for the balance due, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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* and is being mailed to both the applicant and the respondent.

Dated: November 06, 2012.

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Residential Tenancy Branch