



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNSD MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, to keep all or part of the pet and or security deposit, and for money owed for damage or loss under the Act, regulation or tenancy agreement.

The Landlord affirmed that each Tenant was served notice of this proceeding on September 12, 2012 by registered mail to the forwarding address provided by the Tenants. Canada Post receipts were submitted in the Landlord's evidence. The Landlord advised that the Tenants ignored the Canada Post notices as they simply refused to accept service of his hearing documents. He noted that the evidence which he sent months later via registered mail to each tenant at the same address was signed for and received by the Tenants. He further advised that neither Tenant attempted to contact him after receiving his evidence package which clearly outlines his request for monetary compensation.

Case law has established that refusal to accept registered mail does not avoid service. Based on the foregoing I find that each Tenant was sufficiently served notice of this proceeding, in accordance with the Act, and I continued in the Tenants' absence.

### Issue(s) to be Decided

1. Should the Landlord be granted a Monetary Order?

### Background and Evidence

The Landlord submitted evidence which included, among other things, copies of: the tenancy agreement, a letter from the Tenants to the Landlord dated June 23, 2012, the Tenants' notice to end the tenancy early, Canada Post receipts, the tenancy agreement with the new tenants, advertisements seeking new tenants, the move out condition inspection report form, and the Tenants' signed acknowledgement of early end of tenancy.

The Landlord advised that the Tenants began to occupy the rental unit on June 1, 2011 under a fixed term tenancy agreement that expired on July 30, 2012. Originally rent was \$2,100.00 and the Tenants were responsible for the cost of utilities. On June 24, 2012 the Tenants entered into a two year fixed term that began July 1, 2012 and was set to end on June 30, 2014. Rent was re-negotiated to include the cost of all utilities at a rate of \$2,440.00 per month and the Tenants topped up the deposits to pay \$1,220.00 as the security deposit and \$1,220.00 as the pet deposit.

The Landlord confirmed that on July 31, 2012 the Tenants provided him with notice to end their tenancy effective August 28, 2012, prior to the end of the fixed term. He informed the Tenants of their responsibility to the lease after which they signed the "acknowledgement of early end of tenancy notice" form, as supported by his evidence.

The Landlord submitted that he attempted to re-rent the unit as quickly as possible, for the same rent; however, when his attempts failed he began to reduce the rent in order to mitigate his overall loss. The Tenants vacated the rental unit and attended the move out inspection on August 28, 2012. The Landlord returned the Tenants' pet deposit of \$1,220.00 on August 28, 2012 and the Tenants paid him the \$500.00 liquidated damages fee. The Tenants signed the move out condition inspection report form agreeing to a deduction of \$660.00 from their security deposit which included \$100.00 for water, \$60.00 for cleaning, \$300.00 for painting, and \$200.00 for damages.

The Landlord stated he was able to re-rent the unit as of October 9, 2012 for \$2,200.00 per month which includes the cost of utilities. He noted that he was fortunate enough to find new tenants who entered into a two year tenancy to eliminate future liability to these Tenants.

The Landlord is seeking a Monetary Order for loss of rent as follows:

- \$2,440.00 September rent
- \$1,640.00 October rent
- \$4,800.00 for the remaining 20 months of \$240.00 loss of rent per month

He is also seeking recovery of his registered mail costs of \$40.00.

### Analysis

When a landlord makes a claim for damage or loss the burden of proof lies with the landlord to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 45(2) of the Act stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy as the end of the tenancy.

I accept the undisputed evidence which proves the Tenants ended their tenancy in breach of the Act, which has caused the Landlord to suffer a loss of rental income. Upon review of the evidence before me I find the Landlord did what was reasonable to rent the unit as soon as possible which resulted in him having to lower the monthly rent to attract new tenants for the duration of the fixed term.

Based on the forgoing I hereby award the Landlord **\$8,880.00** which includes:

\$2,440.00 September 2012 loss of rent

\$1,640.00 October 2012 loss of rent

\$4,800.00 for the remaining 20 months at \$240.00 per month (November 2012 to June 30, 2014).

In regards to registered mail fees for bringing this application forward, I find that the Landlord has chosen to incur these costs that cannot be assumed by the Tenants. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Costs incurred due to a service method choice are not a breach of the Act. Therefore, I find that the Landlord may not claim mail costs, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*. Accordingly, I dismiss the Landlord's claim for \$40.00 mail costs.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Loss of Rent up to June 30, 2014	<u>\$8,880.00</u>
<b>SUBTOTAL</b>	<b><u>\$8,880.00</u></b>
<b>LESS:</b> Balance of Security Deposit held in trust	
\$1,220.00 – \$660.00 agreed to by Tenants	
Plus interest of \$0.00	<u>-560.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$8,320.00</u></b>

### Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$8,320.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia 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: December 04, 2012.

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Residential Tenancy Branch