



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that the Tenant was served the hearing documents and their evidence on October 5, 2012 by registered mail. Canada Post receipts were provided in the Landlord's testimony. The Landlord advised that he had checked the tracking of the documents and the Tenant signed receipt of them on October 17, 2012. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding and I continued in his absence.

### Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; the Tenant's notice to end tenancy; the move out condition inspection report form; the Landlord's written statement; and advertisements listing units for rent in the building.

The Landlord confirmed that they did not provide a copy of the move in inspection report form in their evidence. He was not able to provide testimony to confirm the date an inspection was done however he argued that they are always done on the first day of the tenancy.

The tenancy agreement was for a fixed term that began on March 15, 2009 and switched to a month to month tenancy after March 31, 2010. Rent was initially payable

in the amount of \$950.00 and was subsequently raised to \$1,034.97 per month plus parking. On March 15, 2009 the Tenant paid \$475.00 as the security deposit.

The Landlord submitted that the Tenant provided his notice to end tenancy late as he placed it in the drop box after 6:00 a.m. on September 1, 2012, so they are seeking to recover one month's lost rent for October 2012. He confirmed that this unit has remained vacant and has been re-rented effective January 1, 2013.

The Landlord acknowledged that in October 2012 they had a total of three vacancies, two 2 bedroom units and one 1 bedroom unit. They run continuous advertising on their website so as soon as they receive notice they post the unit available for rent. In this case he stated that they also placed tear off ads in local shops and placed an advertisement on the internet on September 29, 2012. He advised that it has been a difficult few months as the vacancy rate in their city has been increasing. He confirmed that they were seeking market value rent for the Tenant's unit which is higher than the amount paid by the Tenant.

### 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.

I have carefully considered the undisputed testimony and evidence provided by the Landlord and on a balance of probabilities I find as follows:

I accept that the Tenant breached the Act by providing his notice to end tenancy one day late and that the Landlord was not able to re-rent the Tenant's unit until January 1, 2013. That being said, the Landlord advertised the unit at a higher rent on their own website and then advertised on the commonly used internet site September 29, 2012 for rent that is higher than what the Tenant paid. The Landlord advertised the higher rent when they knew the vacancy rate was increasing in this city and they had three

other vacancies in this building. It would have been reasonable for the Landlord to reduce the advertised amount or at least advertised it at the same rate the Tenant was paying in attempts to minimize the loss. Based on the foregoing, I find that Landlord did not do what was reasonable to mitigate their loss and therefore they provided insufficient evidence to meet the test as listed above. Accordingly I dismiss the Landlord's application.

The Landlord has not been successful with their application and is therefore not entitled to retain the security deposit. The Landlord is hereby ordered to return the Tenant's security deposit plus interest in the amount of **\$475.00** forthwith.

I further find that the Landlord must bear the burden of the \$50.00 filing fee.

### Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

The Tenant has been issued a Monetary Order in the amount of **\$475.00**. This Order is legally binding and must be served upon the Landlord in the event that the Landlord does not comply with my previous Order to return the security deposit. This Order 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 21, 2012.

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Residential Tenancy Branch