



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MND, MNSD and FF

### Introduction

This hearing was convened on the landlord's application of November 8, 2012 seeking a monetary award for loss of rent after the tenant's left the fixed term rental agreement early. The landlord also sought the cost of carpet cleaning, recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balance owed.

### Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to monetary award for the claims submitted and in what amounts.

### Background, Evidence and Analysis

This tenancy began on August 1, 2012 under a fixed term rental agreement set to end on July 31, 2013. Rent was \$890 plus \$20 parking and the landlord holds security and pet damage deposits of \$445 each, both paid on July 9, 2012.

The tenants gave written notice on September 30, 2012 that they would be vacating the rental unit on October 31, 2012. As required by the rental agreement, the tenants have paid \$300 in liquidated damages.

During the hearing, the landlord submitted the following claims on which I find as follows:

**Rent/loss of rent for November 2012 – \$890.00.** This claim arises from the landlord's claim that she was unable to find new tenants for the rental unit until December 1, 2012.

Section 45(2)(b) of the *Act* states that tenants may given notice to end tenancy for a fixed term rental agreement only for a date that is not earlier than the end of tenancy

date set by the agreement, July 31, 2013 in the present case. Section 7 of the *Act* states that if one party to a rental agreement suffers a loss due to the non-compliance of the other with the agreement or the legislation, the non-compliant party must compensate the other for that loss. Section 7 imposes a duty on the claimant to do whatever is reasonable to minimize their loss.

In the present matter, the landlord has submitted evidence of paid print advertising beginning October 1, 2012, premium paid positioning on the Used Victoria website and advertisements on the Craigslist and Kijiji websites. Therefore, I find that the landlord has taken reasonable steps to minimize the loss.

The tenants stated that they had been led to believe by the building manager at the time of signing the agreement that that only cost they would incur if they left the fixed term agreement early would be the \$300 in liquidated damages and \$100 in carpet cleaning. They said this was of key importance to them as they were expecting a child, and the male tenant, a member of the military, faced a possible transfer to another city.

The tenants also stated that they would have attempted to find new tenants themselves if they had been aware of the potential liability but the landlord pointed out that they had received and signed a document on October 1, 2012 outlining their responsibility for loss of rent due to the breach of the fixed term agreement. A second document provided to them on October 1, 2012 was very specific in outlining claims for loss of rent and possible rent differential if the unit was rented at a lower rate.

The tenants stated that they could provide a witness, another tenant, who would say said she too was under the impression that her only exposure from breaking the fixed term agreement was the liquidated damages charge and carpet cleaning. I accepted that the witness would so testify and found it was not necessary to contact her.

I have examined the rental agreement and find that, for the most part, it is a standard fixed-term rental agreement, duly signed by the tenants, and that it is binding. While the building manager was not present for the hearing, the property manager (landlord) stated that is fully aware of the features of a fixed term agreement, and while there may well have been a misunderstanding at the signing, she would not have misled the tenants on their obligations under the agreement. In addition, I find the written agreement, signed by the parties, supersedes any verbal discussion between them.

The landlord noted the tenants comment that they would have tried to find new tenants if they had known of their liability for November rent, when in fact it was made abundantly clear to them in writing on October 1, 2012.

I find that the tenants are responsible for the landlord's loss of rent for November 2012. However, I am adjusting that award to restore a military discount/rebate of \$44.50 removed from the tenants' rent for October 2012 on the grounds that the breach did not occur until November 1, 2012.

**Carpet cleaning - \$100.** This claim was agreed to by the tenants and it is allowed in full.

**Filing fee - \$50.** As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

**Security and pet damage deposits – \$445 x 2 = \$890.** As authorized under section 72 of the Act, I hereby order that the landlord retain the security and pet damage deposits in set off against the balance owed.

**Laundry credit – \$0.15.** The tenants' ledger shows a remaining credit for laundry of 15 cents.

Thus, I find that the landlord is entitled to a monetary award calculated as follows:

<b>Award to Landlord</b>		
Carpet cleaning	100.00	
Filing fee	<u>50.00</u>	
Sub total	\$1,040.00	\$1,040.00
<b>Tenants' Credits</b>		
Security deposit (No interest due)	\$ 445.00	
Pet damage deposit (No interest due)	445.00	
Military discount/rebate for October 2012	44.50	
Laundry credit	<u>0.15</u>	
Sub total	\$ 934.65	- 934.65
<b>TOTAL (Balance remaining owed to landlord)</b>		<b>\$ 105.35</b>

### Conclusion

In addition to authorization to retain the security and pet damage deposits in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$105.35** for service on the tenants.

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 17, 2012.

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Residential Tenancy Branch