



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD and 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 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 appeared; the tenants did not appear.

The landlord gave evidence that she served each tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on December 12, 2012. The evidence included the registered mail receipts and tracking information.

I questioned the landlord as to the address used by the landlord for service of the hearing documents and she said that she spoke with the tenants and confirmed with them the address used was their current address.

I find the tenants were served notice of this hearing 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 her 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, to retain the tenants' security deposit and to recover the filing fee?

### Background and Evidence

The landlord gave evidence that this tenancy began on November 1, 2011, ended sometime during the last week of November 2012, when the tenants vacated the rental unit without notice, monthly rent was \$650.00, and the tenants paid a security deposit of \$325.00 at the beginning of the tenancy.

The landlord's claim is in the amount of \$1001.60, which includes loss of rent revenue for December 2012 in the amount of \$650.00, carpet cleaning of \$201.60, repair to damage caused by the tenants for \$100.00, and the filing fee of \$50.00.

The landlord's relevant evidence included portions of the tenancy agreement and a quote from the carpet cleaner.

The landlord testified that the tenants gave insufficient notice of their intent to vacate the rental unit, causing the landlord to suffer a loss of revenue for the month of December 2012. The landlord explained that another tenant in the building alerted the landlord to the tenants moving their belongings from the rental unit and that the tenants vacated the premises by November 29, 2012, without notifying the landlord.

The landlord also said the carpet needed to be cleaned at the end of the tenancy, pointing to the quote received by a carpet cleaning company.

The landlord said that they were also required to repair damage caused by the tenants.

When questioned, the landlord confirmed that although she paid the amounts claimed, she failed to provide receipts.

### 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.

*Loss of Revenue*- Section 45 of the Act requires a tenant to give notice to end the tenancy 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. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy.

In the case before me, I accept the undisputed evidence of the landlord and find the tenants failed to give any notice to the landlord of their vacating the rental unit. 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 December 2012.

I am satisfied, based on the undisputed evidence of the landlord, that the tenants provided insufficient notice under the Act to vacate, violating the *Act* and tenancy agreement and that the landlord took reasonable steps to minimize their loss for December 2012. I therefore find the landlord has proven a claim for loss of revenue for December in the amount of \$650.00.

*Carpet cleaning and repair of damages*-I find the landlord failed to submit proof that they suffered a loss as they provided no receipts or proof of payment for these claimed items. As such, I find the landlord has failed to meet the third step in their burden of proof and I therefore dismiss their claim for \$201.60 for carpet cleaning and \$100.00 for damage repair.

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

I find the landlord has proven a total monetary claim in the amount of \$700.00, comprised of loss of revenue for December 2012 in the amount of \$650.00 and recovery of the filing fee of \$50.00.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$325.00 in partial satisfaction of their monetary claim and I grant the landlord a final, legally binding monetary order in the amount of \$375.00 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.

### Conclusion

The landlord has proven a monetary claim of \$700.00, may retain the tenants' security deposit of \$325.00 in partial satisfaction of that claim, and is granted a monetary order for the balance due, in the amount of \$375.00.

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: January 16, 2013

