



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF, SS

### Introduction

This hearing was convened in response to an application filed by the landlord seeking a monetary order for damages and unpaid rent, an Order to be allowed to retain the security and pet deposits and recover the filing fee paid for hits application and for an Order to serve documents or evidence in a different way than required by the Act.

Both parties appeared at the hearing of hits matter and gave evidence under oath.

The Landlord submitted that hits application is not made under the Manufactured Home Park Tenancy Act but rather the Residential Tenancy Act. The application has been amended to reflect this change.

The landlord submitted that he did not make application for an Order to serve documents or evidence in a different way than required by the Act. This matter will therefore not be dealt with.

### Issue(s) to be Decided

Has the landlord met the burden of proving his claims?

### Background and Evidence

This tenancy began August 2010 and ending in September 2012. The tenancy was initially for a fixed term that ended on August 15, 2011 and it continued on a month-to-month basis thereafter. Rent was fixed at \$800.00 per month payable on the first of each month and the tenants paid both a security and a pet deposit of \$400.00 each.

The landlord testified that he did not prepare Condition Inspection Reports therefore no such reports were submitted into evidence. The landlord submitted a number of photographs, a series of text message conversation print outs and some receipts. The landlord seeks the following sums:

Cleaning – 3 people, 4 days, 10 hours per day 120 hours x \$15.00 per hour	\$1,800.00
Cleaning – 1 person 4 days \$3 hours per day = 12 hours x \$15.00	180.00
Commuting 32 hours x \$15.00	480.00
Repairs 1 person 3 weekends @ \$20.00 per weekend	60.00
Commuting 4 trips 4 hours each way 310 K each way = 2,480 x .50	1,240.00
Materials	378.73
Dump Fees	9.75
Unpaid Rent (September 2012)	800.00
Unpaid Rent (October 2012) “un-rentable”	800.00
Replace carpets quote	1,200.00
Replace lino quote	1,449.00
Replace window screens quote	345.00
Replace broken window quote	112.00
Replace broken fence quote for materials only	29.00
Replace kitchen countertop material only quote	286.00
Replace missing window blinds 5 blinds x \$29.99 each quote from Sears Catalogue	167.00
Total	\$9,336.48

The landlord testified that the carpets were 8-10 years old, one portion of the lino was 5 years old and the rest was also 8-10 years old. The landlord says each window screen was torn or missing and there was a broken window. The landlord says the kitchen countertops were 15 years old and that half of the counters were missing. The landlord says all the window coverings were missing.

The tenant agrees that she gave notice on August 20, 2012 intending to vacate by September 3, 2012. The tenant says they did not pay September's rent because the landlord wanted them to vacate as soon as possible so he could start showing the property to prospective tenants but they later agreed that the landlord could keep the \$800.00 deposits they had paid in lieu of rent. The tenant says they eventually vacated on September 20, 2012.

The tenant says that the rental unit was not in good shape when they moved in and when they arrived to move in all windows were left wide open and there were never any screens. The tenant says they did not complain because at \$800.00 per month the rent was very reasonable. The tenant says she did clean the rental unit at move-out save for the kitchen which was left unclean because the landlord rushed them out so they

could show the place to prospective tenants. The tenant says the landlord agreed to complete the cleaning.

The tenant says no windows were broken when they vacated. The tenant says the baseboard heaters never worked and there were no blinds on the windows of the rental unit when they moved in. The tenant says she supplied her own blinds and left them when she vacated. The tenant agrees that she did not shampoo the carpets when she left but says she shampooed them every month during the tenancy. The tenant says the lino had cracks and nicks in it at move-in and the counter tops were very old. The tenant says one half of the counter top was just wood and perhaps this is what the landlord means when he states half of the countertops were gone. Finally, the tenant says she and her husband repaired the fence themselves.

### Analysis

The tenant disagrees with all claims made save for the claims for September's rent which I will allow. The landlord bears the burden of proving his claims. As the landlord did not prepare Condition Inspection Reports at move-in or move-out he is required to bring other sufficient evidence to show that the tenant is responsible for the damaged that may now exist. In this case, the tenant has an equally probable version of events i.e. that the rental unit was in poor shape at move in. Further, based on the testimony of the landlord, the age of some items such as the carpets, lino and countertops renders them at or past their lifespan and ready for replacement which is the responsibility of the landlord. Finally, for many of the items claimed, the landlord has supplied only quotations, not invoices which leaves the question as to whether the landlord is actually out of pocket for the sums claimed. On this basis the claims for damages and labour are dismissed.

I will allow some time for cleaning because the tenant has admitted she did not clean the rental unit entirely. The tenant did argue that the landlord wished her to leave early so he could show the rental unit to other prospective tenants but I will still allow some cleaning time to the landlord as it is the responsibility of the tenant to clean at move-out. If a tenant agrees to move earlier, it remains her responsibility to clean unless there is an agreement in writing to the contrary. I will therefore allow the landlord 10 hours of cleaning time at \$15.00 per hour for a total of \$150.00. I will also allow the dump fees. I am not convinced that all of the supplies and materials purchased totalling \$378.73 were required as a result of the actions or neglect of the tenants, however as I have found that the landlord was required to do some cleaning I will allow \$150.00 towards materials and supplies.

With respect to the claims for commuting and mileage charges I will not make any award. It is the landlord's choice to live in Calgary and carry on a rental property business in British Columbia. If the landlord has to travel to British Columbia to attend to his business he should pay his own commuting costs.

With respect to the landlord's claim for October rental loss, the landlord has supplied no evidence with respect to mitigation which is a requirement in meeting the burden of proving a revenue loss. This claim is therefore dismissed.

In conclusion I will allow the following sums:

Cleaning	\$150.00
Cleaning – 1 person 4 days \$3 hours per day = 12 hours x \$15.00	0.00
Commuting 32 hours x \$15.00	0.00
Repairs 1 person 3 weekends @ \$20.00 per weekend	0.00
Commuting 4 trips 4 hours each way 310 K each way = 2,480 x .50	0.00
Materials	150.00
Dump Fees	9.75
Unpaid Rent (September 2012)	800.00
Unpaid Rent (October 2012) "un-rentable"	0.00
Replace carpets quote	0.00
Replace lino quote	0.00
Replace window screens quote	0.00
Replace broken window quote	0.00
Replace broken fence quote for materials only	0.00
Replace kitchen countertop material only quote	0.00
Replace missing window blinds 5 blinds x \$29.99 each quote from Sears Catalogue	0.00
Total	\$1109.75

### Security Deposit

The landlord holds a security and pet deposit totalling \$800.00 I will allow the landlord to retain this sum in partial satisfaction of the monetary award made herein.

### Filing Fee

As the landlord has achieved some success I will also allow him to recover the \$100.00 filing fee he has paid for this application.



Final Calculation of Monetary Award in Favour of Landlord

Monetary Award Granted	\$1,109.75
Filing Fee awarded	100.00
Less Security Deposit (no interest accrued)	-800.00
Balance Due and Owing by Tenants to Landlord	\$409.75

Conclusion

The landlord is provided with an Order in the above terms enforceable as any Order of the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: February 12, 2013

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Residential Tenancy Branch

