



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNR, MNSD, FF, MNDC,

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. This matter was heard on January 21, 2013. The tenant requested to adjourn the matter to review some evidence of the landlord and to possibly engage in discussions to resolve the matter. The landlord was content with this and the matter was adjourned to today's date whereby only the landlord attended. The line remained open and monitored for the tenant to join us but she never did. The matter concluded today and a decision has been made based on the testimony and evidence provided at the first hearing and that of today's hearing.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background

The tenancy began on or about September 1, 2011 and ended on September 14, 2012. Rent in the amount of \$2400.00 is payable in advance on the first day of each month. An agreed discount rate of \$1800.00 was payable for the first two months. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$900.00. Both parties agree that a "walk thru" was conducted at the beginning of the tenancy but no formal condition inspection report was conducted or filled out at move in or move out.

Evidence and Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the landlord must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

**First Claim-** The landlord is seeking \$3400.00 of unpaid rent. The landlord testified that the tenant “shorted them” \$600.00 per month from May 2012 – August 2012, as well as the total \$2400.00 rent due for the month of September. The tenant adamantly disputes this claim. The tenant does acknowledge that she was late with the rent at times but all rent was paid in full except for the month of September 2012. The tenant did not pay any rent as she was given an “illegal eviction”. On August 14, 2012 the landlord gave the tenant a “Cancellation of Residential Tenancy Agreement”. The landlord acknowledged that he had given this notice as the tenant had failed to pay the full amount of rent over the previous four months. The landlords advised that as of today’s hearing a total of \$3400.00 in unpaid rent remained outstanding. The landlords provided documentation to support this claim and I therefore find that the landlord is entitled to \$3400.00.

**Second Claim –** The landlords are seeking \$842.89 for the replacement of carpet in the unit, \$962.06 for landscaping, and \$610.40 for general cleaning for a total of \$2415.35. The landlords provided receipts to reflect this amount. The tenant disputes this claim. The tenant testified that only one room had carpet and that it was already in poor

condition. The tenant acknowledged that she would take care of the lawn even though it was not reflected on the tenancy agreement, however she does not agree with the claim as put forth by the landlord that she damaged the yard. She stated that the landlord's pictures do not depict the damage as claimed and the tenant further stated that without the condition inspection report the landlord should not be entitled to make any claims.

Sections 23 and 24 of the Act address the above as follows;

**23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

**(4) The landlord must complete a condition inspection report in accordance with the regulations.**

**(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.**

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

**Consequences for tenant and landlord if report requirements not met**

**24** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The landlord has not been able to satisfy me in regards to this portion of their claim. The condition inspection report is a vital part of any tenancy and is required under the Act, without that report or any other supporting documentation of the condition at move in I'm unable to ascertain the change of condition in the unit, if any. Based on the above I dismiss this portion of the landlords claim.

**Third Claim-** The landlord is seeking \$937.55 for the local municipality utilities bill. The tenant disputes this claim as it was to be included as per their tenancy agreement.

Garbage collection and water are included in the utilities bill however the sewer service

was included in the tenancy agreement and therefore the tenant would not be responsible for those costs. The remaining utility costs are \$795.87. The tenant disputes this claim. She stated on several occasions that she was not aware that she was to “pay the landlords property taxes”. In addition this bill is for a billing cycle that refers to “June 16-2012 to October 15, 2012”. It was not made clear during the hearing the actual amount the landlords were seeking as the tenant vacated on September 14, 2012 and what was the tenant’s actual usage. The landlords did not provide a clear and accurate calculation for consideration. Based on all of the above the landlord has not satisfied me of this claim and I therefore dismiss this portion of their application.

**Fourth Claim** – The landlord is seeking \$196.00 to remove garbage and rubbish left behind by the tenant. The tenant disputes this claim and stated “it’s their garbage, not mine”. The landlord provided photos taken the day after the tenant vacated the unit and the garbage left behind. The landlord also provided a receipt to support this portion of their application. I find that the landlord is entitled to \$196.00.

**Fifth Claim** – The landlord is seeking \$600.00 for patching the wall and painting, \$250.00 for replacing fixtures and \$100.00 for replacing doors for a total of \$850.00. The landlords did not provide any receipts for this portion of their claim as they conducted the work. The landlords feel this is a “fair estimate” of the costs to remediate these items. The tenant again renewed her argument that without the condition inspection reports the landlords should not be able to make this claim. As I have already stated in the second claim, without being given a “snapshot” of the condition at the time the subject tenant moved in I’m unable to ascertain any changes in the unit.

When a party makes a claim for damage or loss the burden of proof lies with the applicant 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.

The landlords have been unable to provide sufficient evidence to meet all four elements required.

Based on the above I dismiss this portion of the landlord's application.

Conclusion

In summary, the landlord has been successful in the following claims:

Unpaid Rent	\$3400.00
Rubbish Removal	\$ 196.00
Filing Fee	\$100.00
	\$
	\$
	\$
<b>Total:</b>	<b>\$3696.00</b>

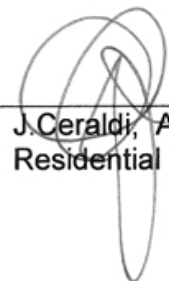
The landlord has established a claim for \$3696.00. I order that the landlord retain the \$900.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2796.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to a monetary order of \$2796.00.

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*.

Dated: March 11, 2013



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J. Ceraldi, Arbitrator  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

## Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website ([www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)) has information about:

- How and when to enforce an order of possession:  
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:  
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:  
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:  
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:  
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*  
**(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

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Residential Tenancy Branch

#RTB-136 (2011/07)

