



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 4, 2013, by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that the Tenant was served copies of the application for dispute resolution and notice of hearing documents by registered mail on January 4, 2013. Canada Post tracking receipts were provided in the Landlord's evidence. Based on the submissions of Landlord I find the Tenant was sufficiently served notice of this proceeding in accordance with the Act and I continued in the Tenant's absence.

### Issue(s) to be Decided

Should the Landlord be granted a monetary order?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; the move in and move out condition inspection report form; Canada Post receipts; and receipts for advertising.

The Landlord affirmed that the Tenant entered into a fixed term tenancy that began on September 1, 2012 and was set to end on June 30, 2013. Rent was payable on the first of each month in the amount of \$1,250.00 and on August 19, 2012 the Tenant paid \$625.00 as the security deposit plus \$75.00 as the pet deposit.

The Landlord stated that the Tenant told her on November 10, 2012 that he would be vacating the unit by November 11, 2012. The Tenant attended the move out inspection on November 11, 2012, provided the Landlord with his forwarding address, and signed the condition inspection report form agreeing to forfeit his deposits towards unpaid December 2012 rent.

The Landlord testified that she advertised the unit immediately and was not able to re-rent the unit until February 1, 2013. Therefore, she is seeking to recover the rest of the lost rent for December 2012 and January 2013, plus the \$25.37 in advertising costs as supported by her evidence. The Landlord also wanted to recover the cost of serving the documents by registered mail.

### Analysis

Section 45 of the Act stipulates that a tenant may end a fixed term tenancy agreement by providing the landlord thirty days written notice to end the tenancy effective on a date that is not earlier than the end of the fixed term.

In this case the Tenant vacated the unit on November 11, 2012, ending the tenancy in breach of section 45 of the Act. This breach caused the Landlord to suffer a loss of rent for December 2012 and January 2013 plus the cost of advertising the unit. Accordingly, I award the Landlord \$1,250.00 for rent for December, \$1,250.00 rent for January, plus advertising costs of \$25.37 for the total amount of **\$2,525.37**.

In regards to registered mail fees for bringing this application forward, I find that the Landlord has chosen to incur these costs that cannot be assumed by the Tenant. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Section 89 of the Act provides for various methods of service therefore I find costs incurred due to a service method choice are not a breach of the Act. Accordingly, I find that the Landlord may not claim mail costs, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*.

The Landlord has primarily been successful with their application; therefore, I award the Landlord recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security and pet deposit plus interest as follows:

Loss of Rent and advertising costs	\$2,525.37
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$2,575.37</b>
<b>LESS:</b> Pet Deposit \$75.00 + Interest 0.00	- 75.00
<b>LESS:</b> Security Deposit \$625.00 + Interest 0.00	<u>-625.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,875.37</u></b>

### Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,875.37**. This Order is legally binding and must be served upon the Tenant. In the event that the

Tenant does not comply with this Order it 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: March 21, 2013

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Residential Tenancy Branch

