



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the landlords: MNSD, MNR, MND, MNDC, FF  
For the tenants: MNSD, MNDC, FF

### Introduction

This hearing was re-convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”). The original hearing was scheduled for March 14, 2013; however, due to the late submission of evidence by the landlords, the hearing was adjourned to accommodate the tenants’ request for time in order to respond to the landlords’ evidence.

The landlord applied for authority to retain the tenants’ security deposit, a monetary order for unpaid rent, damage to the rental unit and for money owed or compensation for damage or loss and for recovery of the filing fee.

The tenants applied for a return of their security deposit, doubled, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of this hearing, the evidence was discussed and neither party raised any issues regarding service of the applications or the other’s evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch 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 retain the tenants' security deposit, to a monetary order and to recover the filing fee?

Are the tenants entitled to a monetary order comprised of their security deposit, doubled, and to recover the filing fee?

Background and Evidence

The undisputed evidence is that this tenancy began on August 15, 2009, had ended by December 15, 2012, monthly rent began at \$1600.00, increased to \$1700.00 and the tenants paid a security deposit of \$800.00. The landlord further said he allowed the tenants to move in early, on August 15, 2009.

The parties agreed that there is no move-in or move-out condition inspection report as required by the Residential Tenancy Act and that the landlord has not returned any portion of the tenants' security deposit.

*Landlord's application-*

The landlord's monetary claim listed on their application for dispute resolution was \$1600.00, more specifically \$150.00 for a broken light fixture, \$290.00 for a damaged lawn mower and weed trimmer, \$800.00 for loss of revenue for the balance of December 2012, and \$361.88 for a water utility bill. I note that the total of these claimed amounts does not total \$1600.00.

The landlord's relevant evidence included a copy of the tenancy agreement, receipts, photos of the claimed damaged items, and a copy of the utility bill.

The parties provided the following relevant evidence-

*Broken light fixture*-The landlord submitted that the tenants removed the original light fixture, discovering that it was in a box and broken by the end of the tenancy.

The landlord said the light fixture was brand new when the tenants moved in.

The tenant said that he had the permission of the landlord to put in their own light fixture as at least ½ of the light fixtures were problematic.

The tenant said he could not agree that they broke the light fixture as nothing was mentioned at the move out.

*Damaged weed trimmer and lawn mower*-The landlord submitted that the tenants damaged this equipment.

*Loss of revenue*-The landlord said that the rental period was from the first day through the last day of the month, which meant that when the tenants moved out on December 15, 2012, he suffered a loss of revenue for the balance of the month, in the amount of \$800.00.

The tenant, in response, said that the rental period was from the 15<sup>th</sup> day of each month, and when they gave the landlords notice prior to November 15, 2012, they met the notice requirements in giving a notice to end the tenancy, which was a month.

The tenant said that there were three references in the tenancy agreement which mentions that the rental period was on the 15<sup>th</sup> day of the month.

*Unpaid water bill*-The tenants agreed that they owed this amount.

*Tenants' application-*

The tenants' claim is in the amount of \$1600.00, comprised of their security deposit of \$800.00, doubled, and for recovery of the filing fee.

In support of their application, the tenant said that they provided the landlord their written forwarding address in their notice to end the tenancy, which occurred on December 15, 2012.

### Analysis

In a claim for damage or loss under sections 7 and 67 of the Act or tenancy agreement, the claiming party, both parties in this case, has to prove, upon 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 all reasonable measures to mitigate their loss.

*Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.*

*Landlord's application-*

*Broken light fixture/damaged lawn mower, weed trimmer-*A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections.

In the absence of a condition inspection report or other independent evidence depicting the state of the rental unit both before and at the end of this tenancy, I find there to be insufficient evidence to meet the burden of proof establishing that the tenants damaged the rental unit or other items. A condition inspection could easily reveal such condition and contents of the rental unit.

Additionally, the landlords' own evidence states that the lawn mower and weed trimmer are not included in the rental.

I therefore find the landlord submitted insufficient evidence that the tenants damaged the rental unit and I dismiss their claim for \$150.00 for the light fixture and \$290.00 for damaged lawnmower and weed trimmer.

*Loss of revenue-*In the case before me, the tenancy agreement provides inconsistencies, stating that the tenancy started on the 15<sup>th</sup> day of the month, yet rent was payable on the 1<sup>st</sup> day of the month.

While it is understandable that the tenants believed that they were providing sufficient notice to end the tenancy when they provided notice by November 15, 2012, Section 45 of the Act requires a tenant to give written notice to end the tenancy that is not earlier than one month after the date the landlord receives the notice and is at least 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, and in the case before me, the tenants would therefore be required to give notice to end their tenancy by October 31, 2012.

I therefore accept that the tenants provided insufficient notice to end the tenancy.

However, a landlord cannot sit idly by before making a claim for loss. I find that the landlord submitted no evidence that he attempted to advertise or market the rental unit to have it re-rented as soon as the tenancy ended. I therefore find the landlord failed to take any steps to minimize his loss, which is step 4 of his burden of proof.

I therefore dismiss the landlord's claim for loss of revenue for December 16<sup>th</sup> -31<sup>st</sup> 2012, in the amount of \$800.00, without leave to reapply.

*Unpaid utility bill*-As the tenants agreed that they owe this amount, I find the landlord has proven a monetary claim for the amount of \$361.88.

#### *Tenants' application-*

When a landlord fails to offer opportunities to inspect the rental unit both at the beginning and end of the tenancy and properly complete a condition inspection report, pursuant to section 35 of the Act, the landlord's claim against the security deposit for damage to the property is extinguished under section 36 of the Act. In this case, the landlord applied to keep the security deposit in partial compensation of monetary claims for damages to the property as well as for lost revenue for December 2012 and unpaid utilities.

As the landlord's claim was not only for damage to the property, I find that the landlord complied with the requirement under section 38 and Residential Tenancy Branch Policy Guideline 17 (9) to make an application within 15 days of receiving the tenants' written forwarding address to keep the deposit. The tenants are therefore not entitled to double recovery of the deposit, and I dismiss that portion of the tenants' application.

However I find the tenants are still entitled to recover their security deposit as provided hereafter.

As both parties' applications for dispute resolution contained merit, I do not award either party recovery of the filing fee.

#### Conclusion

The landlord has proven a monetary claim of \$361.88 for an unpaid water bill.

The tenants have proven a monetary claim of \$800.00, comprised of their security deposit.

I have therefore deducted or offset the landlord's monetary claim of \$361.88 from the tenants' monetary entitlement of \$800.00 and I grant the tenants a final, legally binding monetary order in the amount of \$438.12, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants 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. Costs of enforcement may be recoverable from the landlord.

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: April 16, 2013

---

Residential Tenancy Branch