



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MND, MNSD, and FF

### Introduction

This matter was originally scheduled for hearing on March 22, 2013 and was adjourned to the present session when the allotted hour expired without all evidence being heard and to allow another attempt at service of the third named tenant. The present Decision should be read in conjunction with my Interim Decision of March 22, 2013.

Despite declared efforts by the landlord and the other two tenants to find a service address for the third tenant, it remains unknown. As he has not been served, he cannot be named on a Monetary Order, though the other two tenants may file against him in the Provincial Court of British Columbia for his share of any order issued against the co-tenants.

This hearing addresses the landlord's application of January 15, 2013 seeking a monetary award for unpaid rent, general cleaning, damage to the rental property, recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balance owed.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award for the claims submitted.

Claims in damages require that several factors be taken into account: whether damages are proven and attributable to the tenants, the comparison of move-in vs. move-out

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**Residential Tenancy Branch**

#RTB-136 (2011/07)



condition inspection reports, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable.

Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

#### Background and Evidence and Analysis

This tenancy began on August 1, 2012 under a one year fixed term rental agreement set to end on August 13, 2013. Rent was \$1,250 per month and, under the rental agreement signed on July 5, 2012, tenants agreed to pay a security deposit of \$650 and a pet damage deposit of \$350. However, \$60 of that remains unpaid and the total of deposits paid is \$915.

The tenancy ended on January 5, 2013 after the tenants had, by text message of December 19, 2012 given late notice that they would be leaving the tenancy on December 31, 2012 in breach of the fixed term rental agreement.

The landlord has submitted with his evidence six witness letters attesting to the excellent condition of the rental unit at the beginning of this tenancy and the deplorable condition in which it was left. An excerpt from one of them encapsulates the cause of this dispute as follows:

“The home was a garbage dump and damaged throughout. Broken glass, furniture, animal feces and dog hair littered the whole entire household. The carport was also filthy and littered with everything listed above as well with parts, oils and other fluids.

“...entire period that that the tenants had been in the home, not once did I see them put out recycling or garbage....later learned that they had been piling it in his garden shed...causing him to remove the shed and all the gardening equipment he had left on the property.

During the hearing, the landlord submitted into evidence copies of the rental agreement, move-in and move-out condition inspection reports, paid invoices, estimates and photographs (cross referenced in the summary of claims), and a spreadsheet in support the landlord's claims and on which I find as follows:

**Rent – \$725.** While the home was left in severe need of cleaning and repair, the landlord was able to find new tenants for January 15, 2013, and makes this claim for unpaid rent to January 15, 2013 including a rent shortfall carried from November and December 2012.

As a matter of note, as the tenants had breached a fixed term rental agreement by leaving early, it was fortunate the landlord had been able to arrange a new tenancy in mid-January, minimizing the loss for both parties

**Yard labour - \$187.50.** This claim is based on 4 hours labour to clean the yard, 1.5 hours to repair holes left in the yard by the tenants' dog and two hours to clean up dog feces. On referring to the photographic evidence, I find this claim to proven and it is allowed in full.

**House clean up, materials & costs - \$1,131.72.** This claim, supported by photographic evidence and receipts, arose when the landlord entered the home on January 5, 2013 to find abandoned furniture, broken glass, dog hair, human waste, and feces and wood waste in the home. Costs included rental of a 12-yard garbage bin at \$430.53, additional vehicle dump loads at \$27.22, furnace duct cleaning and sanitization at \$373.97 and a hired cleaner at \$300. This claim is allowed in full.

**House clean up, labour - \$225.** This claim is based on eight person hours labour at \$25 per hour to remove refuse to prepare the home for cleaning and one hour for cleaning and steaming curtains. While the hourly rate is slightly above the norm, the working conditions were deplorable and the claim is allowed in full.

**Yard shed material - \$702.77.** This claim is based on replacement of the yard shed and some contents belonging to the landlord. The claim arises from the fact the tenants appear to have put all garbage generated during the five month tenancy in the shed which the landlord described as having become the consistency of pudding with rampant mold and rat feces requiring that it be dismantled and disposed of. The landlord claims the cost of a tyvek suit, respirator and garbage bags and a replacement shed, 60 feet of lawn edging, one pruning saw, landscape fabric, pick, shovel spring rack, and bow head rake. This claim is allowed in full.

**Yard shed labour - \$185.** The tenant concurred with this claim and it is allowed in full.

**Interior house repair materials – \$674.55.** While the landlord used some of his existing materials, this claim is based on materials purchased, including discounted returned paints, to fill holes in the drywall in both bedrooms, the second of which the landlord described as destroyed, the living room and throughout the home. The landlord stated that the rest of the walls were marked beyond scrubbing. The claim also includes replacing a bedroom door that was kicked in, replacing locks as keys were not returned, replacement of two broken blinds and broken light fixture and new kitchen cabinet handle. On the basis of photographic evidence and receipts, this claim is allowed in full.

**Interior house repair labour - \$325.** The landlord claims for thirteen hours work at \$25 per hour and as much of the work would have required skilled labour at a substantially higher cost if done professionally, this claim is allowed in full.

**Replace four windows \$1,687.79.** This claim includes the purchase price off \$1,023.68 plus \$600 for professional installation plus two hours of the landlord's labour at \$50. The landlord stated that the window replacement was necessitated as two of the windows were broken and the all four had deep mold in the caulking and rot in the sills.. The landlord stated the mold had resulted from the tenants' apparent misuse of the air conditioner as a heat source, screens were missing and one of the windows appeared to have been used as an entry way to the carport. The landlord stated the misuse of the air conditioner had been confirmed by the heating oil supplier who had made no deliveries to the address, although the tank had only one cold weather month's support at the beginning of the tenancy. I find that, even with some abuse, given the age of the windows, some of the damage may well have pre-existed and emerged with the taxing use. Therefore, I am reducing the award on this claim to \$800.

**Repair carport - \$1,865.83.** This claim is based on an estimated \$1,465.83 for materials plus \$400 labour to repair the carport and replace the five-year old torch-on membrane roof, and six hours labour to remove materials left in the carport. A photograph submitted into evidence showed a cement block and lumber on the roof in a configuration that indicates it was used as a patio. I find, on the balance of probabilities that the roof may only require repairs rather than full replacement. Therefore, including the six hours labour to remove materials from the carport, I reduce the award on this claim to \$500.

**Rodent removal – \$259.05.** The tenant concurred with this claim and it is allowed in full.

**Hardwood floors - \$1,800 to \$5,000.** The landlord stated that these amounts are based on telephone quotes of approximately \$4.50 per square foot for refinishing the 450 square feet of hardwood flooring damaged by the tenants. The landlord stated he had refinished the 80-year-old solid hardwood floors in 2010 and had been advised that they had substantially more useful life. The tenant noted that there were some scratches on the floor at move in, but the landlord stated that at move-out there were some deep gouges that could not be sanded out and would require replacement of some pieces. Given that there is some element of doubt as to whether the landlord will ever restore the floor to its original quality, I find that the tenant misuse has diminished its value and allow \$500 on this claim.

**Stolen items - \$1,733.58.** This claim includes a jigsaw (\$71.25), a 10-inch variable speed band saw (\$384.96), two oil heaters (\$116.98), cedar lumber for porch hand rail (\$83.82), 60 cedar boards for fencing (\$880.80), and 15 cedar posts (\$302.85). The tenant stated that he was of the belief that the tools and materials in question had been given to the tenant to do with as they wished. The landlord stated that he had merely intended to allow them use of the tools while they were there and to draw on the materials if they needed to repair the fence or deck. Taking into account depreciation of the tools (four years and eight years), and taking into account a possible margin for error in the condition and quantity, I reduce the award on this claim to \$900.

**Filing fee - \$100.** As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

**Security and pet damage deposit – (\$915).** As authorized by section 72 of the *Act*, I hereby order that the landlord shall retain the security and pet damage deposits in set off against the balance owed.

I find that the tenants owe to the landlord an amount calculated as follows:

Rent	\$ 725.00
Yard labour	187.50
House clean up, materials & costs	1,131.72
House clean up labour	225.00
Yard shed material	702.77
Yard shed labour	185.00
Interior house repair materials	674.55
Interior house repair labour	325.00
Replace four windows	800.00
Repair carport	500.00
Rodent removal	259.05
Hardwood floors	500.00
Stolen items	900.00
Filing fee	100.00
Sub total	\$7,215.59
Less retained security and pet damage deposits	- 915.00
<b>TOTAL</b>	<b>\$6,300.59</b>

As a matter of note, while all evidence suggests that the rental property was severely abused, given that the tenants were very young, the landlord might have been more diligent in monitoring the tenancy more frequently.

### Conclusion

In addition to authorization to retain the tenant's security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$6,300.59** for service on the tenants.

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: April 22, 2013

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