



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MND, MNR, MNDC, FF

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, unpaid rent, compensation for damage or loss under the Act and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on January 14, 2013 each of the 3 respondents were given copies of the Application for Dispute Resolution and Notice of Hearing, sent to the forwarding address provided by co-tenant J.D., via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service to each respondent.

Each of the registered mail packages were returned to the landlord marked as moved/unknown. The landlord said that the address was given to them by J.D. just prior to the end of the tenancy. In March 2012 the tenant verbally provided the address and did not provide a written forwarding address. The landlord said that the address is where J.D.'s parents live.

As each of the co-tenants were served with Notice of this hearing to the address given to the landlord's by 1 of the co-tenants I find, pursuant to section 89 and 90 of the Act that each co-tenant is deemed to have been served. However, none of the co-tenant's attended the hearing.

### Preliminary Matters

The application included a detailed calculation of the claim which indicated the deposit had been deducted from the total claim. Therefore, I have amended the application to increase the sum claimed equivalent to the deposit; \$650.00. The landlord thought they had to deduct the deposit from the claim.

The application included a claim for loss of rent revenue vs. unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid April 2012 rent revenue in the sum of \$1,300.00?

Is the landlord entitled to compensation for damage to the rental unit in the sum of \$3,152.55?

Is the landlord entitled to filing fee costs?

Background and Evidence

The 1 year fixed-term tenancy commenced on July 1, 2011, rent was \$1,300.00 due on the first day of each month. A deposit in the sum of \$650.00 was paid. A move-in condition inspection report was completed.

Each of the 3 co-tenants signed the tenancy agreement.

On February 17, 2012 the tenants gave the landlord written notice that they would vacate the unit by 1 p.m. on March 31, 2012. The notice indicated that the house had mold. The landlord told all 3 co-tenants that they could not give notice and that they would have to pay April 2012 rent. The tenants were in the kitchen of the rental unit at the time and told the landlord to leave the property.

The landlord said that the tenants had agreed to meet at the unit on March 31, 2012 at 1 p.m. to complete the move-out condition inspection report. When the landlord went to the property the tenants were not there. The condition inspection report was completed in the absence of the tenants. The only set of keys returned were from co-tenant D.E., who returned the keys on April 1, 2012. D.E. was shown a copy of the inspection report and said she was sorry. The landlord had already had the locks to the unit changed.

The landlord has made the following claim:

April 2012 rent revenue	\$1,300.00
Locks changed	\$100.00
Dump fees	\$50.00
Newspaper advertisement	\$60.00
Painting	\$1,275.00
Landlord labour 64 hours X \$20.00/hour	\$1,280.00
Landlord loss of wages for 2 days	\$387.55
TOTAL	\$4,452.55

The landlord supplied a copy of the following documents as evidence:

- Tenancy agreement signed by all 3 co-tenants;
- Move-in and move-out condition inspection report;
- Photographs of the home taken for a real estate listing that ran until June 30, 2011;
- Twenty-seven photographs taken of the rental unit after the tenants vacated;
- Newspaper advertisement invoice dated March 16, 2012 for 2 different editions, running March 6 to March 16 and 17, 2013, in the sum of \$61.38;
- Landfill payment receipts dated April 4 and March 31, 2012 totaling \$58.75;
- April 12, 2012 invoice for painting, including sanding ceilings, stain blocking, repainting of trim and wall, repair to holes, painting discoloured kitchen ceiling, removal of tape from ceilings, mold cleaning from walls and stain blocker application in the sum of \$2,225.00, marked as paid in full on May 3, 2012; and
- Assorted invoices for other costs not included in the detailed calculation of the claim.

The photograph taken for the listing of the unit showed a home that was neat and clean. The move-in condition inspection report, signed by 1 of the co-tenants indicated agreement that the house was clean and in good condition.

Photographs taken after the tenants vacated showed garbage strewn around the yard; piles of garbage bags, a bike, multiple miscellaneous belongings, mould growing on a window track, the wood stove full of ash, the shop full of items left by the tenants; areas where wall repair was made, discoloured ceiling as the result of wood smoke damage; holes and scuff marks on the walls, damage to a wood door frame; the dryer lint basket that was full of black lint; a litter box surrounded by cat feces; what was described as mold and cat urine on a wall; food left in the fridge; a broken oven door handle and a screen that had been damaged.

The landlords each spent 32 hours of their own time cleaning the home as a result of the state the unit was left by the tenants.

Once the landlord knew the tenants were going to move out they began to advertise the unit. There was some interest in the home but no one wanted to move in for April 1 due to the state of the home.

The landlords had to take 2 days off from work in order to clean and prepare the unit for possible tenants. Verification of this loss was not supplied as evidence.

The landlord had a document signed by 1 of the co-tenants indicating that she expected the landlord to retain the deposit that had been paid.

## Analysis

Residential Tenancy Branch policy suggests that co-tenants are 2 or more tenants who sign a tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Each of the co-tenants was sent copies of the Notice of hearing to the address provided by J.D., but that mail was marked as moved or unknown and returned to the landlord. I have determined that service was completed to the address supplied by 1 of the co-tenants; despite the return of the registered mail. Avoidance of registered mail does not allow a party to evade service. As 1 of co-tenants gave a forwarding address, I find this was the equivalent of an address for the three co-tenants.

Tenants may not end a fixed-term tenancy unless the landlord has breached a material term of the tenancy. There was no evidence before me that this was the case. Therefore, I find that the tenants breached section 45 of the Act, by ending the tenancy before the last day of the fixed term; July 1, 2012.

Section 37(2) of the Act provides:

*(2) When a tenant vacates a rental unit, the tenant must*

*(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*

*(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

From the evidence before me, in the absence of the tenants who were served with Notice of this hearing, I find that the tenants failed to attend the condition inspection on March 31, 2012 and that they did not offer the landlord an alternate time to complete that inspection, as allowed by section 36(1) of the Act. The landlord could not provide a 2<sup>nd</sup> notice to the tenants, as they had vacated the unit.

Therefore, as the tenants failed to attend the move-out inspection I find that their right to return of the deposit was extinguished.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that an arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord.

Based on the testimony of the landlord, the photographic evidence, the inspection report and invoices supplied as evidence I find that the landlord is entitled to the following compensation:

	Claimed	Accepted
April 2012 rent revenue	\$1,300.00	\$1,300.00
Locks changed	\$100.00	\$25.00
Dump fees	\$50.00	\$50.75
Newspaper advertisement	\$60.00	\$60.00
Painting	\$1,275.00	\$1,275.00
Landlord labour 64 hours X \$20.00/hour	\$1,280.00	\$1,280.00
Landlord loss of wages for 2 days	\$387.55	\$50.00
<b>TOTAL</b>	<b>\$4,452.55</b>	<b>\$4,040.75</b>

In the absence of verification of the cost for new locks and the loss of wages I find based on the evidence before me, that there was an infraction of the landlord's legal rights as the result of the tenant's breach of the Act and that nominal compensation is appropriate.

The landlord did not apply to retain the deposit; however the tenant's right to claim return of the deposit has been extinguished. Therefore, the landlord was not required to submit a claim against the deposit and they are not required to return the deposit to the tenants.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

The balance of the landlord's claim is dismissed.

Based on these determinations I grant the landlord a monetary Order in the sum of \$4,090.75. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of \$4,040.75.

The landlord is entitled to the filing fee cost.

The balance of the landlord's claim is dismissed.

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 04, 2013

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Residential Tenancy Branch