



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting return of the deposit; compensation for damage or loss under the Act and to recover the filing fee cost.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The tenant's application was amended to remove the female applicant. The parties agreed that only the male tenant had signed the tenancy agreement and paid rent directly to the landlord. Therefore, as the female applicant was an occupant, she does not have any rights or obligations under the Act.

The landlord applied naming the male tenant only.

### Landlord's Claim

The landlord submitted a claim for the following:

- \$9,000.00 realty fees;
- \$1,000.00 legal fees;

- \$3,000.00 moving van;
- \$1,000.00 loss of quiet enjoyment;
- \$1,000.00 for the posting of the landlord information on Face book; and
- \$1,000.00 for harm caused to the landlord.

The landlord's claim anticipated possible future losses and related to allegations of harm alleged to have been caused once the tenancy had ended and in the future. The landlord's claim was dismissed as no verification of a loss caused as a result of a breach of the Residential Tenancy Act was supplied. A landlord is not entitled to a reciprocal right to quiet enjoyment; the landlord's remedy is to evict a tenant for cause. Claims of harassment or other criminal allegations are not contemplated by the legislation in this case; a landlord is at liberty to pursue other avenues of recompense.

#### Issue(s) to be Decided

Is the tenant entitled to compensation for the last 2 weeks of rent paid?

Is the tenant entitled to return of the deposit or may the landlord retain the deposit?

Is either party entitled to filing fee costs?

#### Background and Evidence

The tenancy commenced on June 1, 2012, rent was due on the first day of each month. A deposit in the sum of \$350.00 was paid. A move-in condition inspection report was completed.

There was no dispute that the tenant paid December 2012 rent and vacated the unit on December 14, 2012. The landlord received the rental unit keys on December 14, 2012.

The parties agreed that on December 21, 2012 the tenant gave the landlord a note, a copy of which was supplied as evidence. This note indicated that the tenant was vacating; although an effective vacancy date was not given. This note did not provide a forwarding address for the tenant.

On January 30, 2013 the tenant applied for dispute resolution. The landlord received the tenant's application on February 7, 2013 and on February 14, 2013 they applied claiming against the deposit using the service address provided on the tenant's application.

The tenant has claimed return of ½ of December 2012 rent as the unit was unhealthy as a result of cigarette and marijuana smoke. The landlord had also entered the unit on 3 occasions, in breach of the Act. The landlord did not respond this allegation.

### Analysis

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.

The landlord's claim has been referenced in the preliminary matters section of this decision.

Pursuant to section 44(f) of the Act, I find that the tenancy ended on December 30, 2012. The tenant had paid rent until that time and had not given proper notice to end the tenancy, as required by section 45 of the Act.

I find that by December 14, 2012 the landlord was aware that the tenant had vacated and that the tenant would not return to the unit.

The tenant has claimed he ended the tenancy for good reason and that the reasons cited were sufficient to allow him to end the tenancy without Notice as required. I find that either the tenant had to give the landlord proper written notice in accordance with section 45 of the Act, or he could have submitted an application for dispute resolution requesting Orders in relation to any breach of the Act by the landlord.

Therefore, I find that the claim for return of ½ of December 2012 rent is dismissed as this would provide the tenant with compensation as a result of his breach of the legislation.

There is no doubt that there was conflict between the parties, but each party has a responsibility to comply with the legislation.

As the landlord is holding the deposit and their claim has failed I find that the tenant is entitled to return of the security deposit in the sum of \$350.00.

I decline filing fees to either party.

Based on these determinations I grant the tenant a monetary Order in the sum of \$350.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's claim is dismissed. The landlord has been Ordered to return the security deposit to the tenant.

The tenant'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 24, 2013

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Residential Tenancy Branch

