



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAGSEN REALTY INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR MND MNSD MNDC FF

### Preliminary Issues

When this proceeding began on May 29, 2013, the Tenant testified that she did not receive a copy of the Landlord's application for dispute resolution and she did not receive the Landlord's evidence.

The Landlord testified that he sent the Tenant a copy of his application, along with all the other hearing documents, by registered mail on May 8, 2012. He pointed out that the tracking receipt was provided in evidence to the *Residential Tenancy Branch*. He advised that he sent a second registered mail package with his evidence on May 17, 2013, and the tracking number was provided in his testimony.

The Tenant argued that she had no idea what the claim was that was being brought against her but she did know the Landlord was trying to keep her deposit. She pointed to the evidence she had submitted which included a statement from her sister which states "*As of today May 21, 2013 I have not received any further mail from (Landlord's name). I am off work today and there is no mail*". The Tenant confirmed that her evidence consisted of: the letter from her sister; a letter from the Concierge desk; and her written response to the Landlord's claim.

The Canada Post website tracking information was reviewed during the hearing and indicated that the Tenant had been left a notice card on May 21, 2013, the same day her sister wrote her letter indicating there was no mail. A second and final notice card was left for the Tenant on Monday May 27, 2013.

Upon review of the above information, I favor the evidence of the Landlord over the Tenant's testimony where she states she did not receive a copy of the application and that she was not notified of the registered mail package that was sent with the Landlord's evidence. I favored the Landlord's evidence because it was forthright and credible and supported by Canada Post tracking information.

I find the Tenant's argument that she had no idea what the Landlord was claiming to be improbable given the circumstance discussed. I make this finding, in part, because the

Tenant's written submission included a response to each item the Landlord was claiming. Specifically, that she broke her lease and left early because of an infestation of pests, that pest control was required and not provided, and no move out inspection report was provided which could indicate whether she cleaned the carpet or not. Furthermore, I find that it is not a mere coincidence that her sister wrote her letter on the same date that Canada Post indicates the first notice card was left for the registered mail that contained the evidence.

I went through each item the Landlord had claimed on his application with the Tenant. She confirmed that she wrote down each item and that she now knew what was being claimed by the Landlord. I informed both parties that this hearing would be adjourned and reconvened on May 30, 2013, at 9:00 a.m. and I instructed the Tenant to attend the post office, with her identification, to pick up the registered mail package containing the Landlord's evidence, prior to the reconvened hearing.

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing *"to cover "loss of rent" for January, February, and March 2013"* in the details of dispute on their application.

Based on the aforementioned I find the Landlord's intention of seeking to recover the payment for loss of rent, for a period after the tenancy ended in accordance with the 10 Day Notice, was an oversight and/or clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application. Therefore I amend their application, pursuant to section 64(3)(c) of the Act.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 5, 2013, by the Landlord to obtain a Monetary Order for: unpaid rent or utilities; for damage to the unit, site or property; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing on May 29, 2013 for thirty minutes and again on May 30, 2013, for forty minutes. They acknowledged receipt of evidence submitted by the other and gave affirmed testimony. The Landlord confirmed that he did not serve the Tenant with a copy of the tenancy he entered into with the new tenants.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### 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: a monetary order worksheet; the tenancy agreement and addendum; the new tenant's tenancy agreement; photos; receipts; and the tenant ledger.

The Tenant submitted documentary evidence which included, among other things, copies of: her written statement; two witness statements; and a note from the concierge desk indicating her fax was sent May 21<sup>st</sup>, 2013 and not May 22<sup>nd</sup>.

The parties confirmed that they entered into a written fixed term tenancy agreement that began on May 8, 2012 and was set to end on May 31, 2013. Rent was payable on the first of each month in the amount of \$1,350.00 and on May 8, 2012, the Tenant paid \$675.00 for the security deposit. The parties attended inspections and signed the move in condition inspection report form on May 8, 2012 and the move out condition inspection form during the week of January 21 – 25, 2013. The Tenant's forwarding address was provided by e-mail on February 25, 2013.

The Landlord testified that in December 2012 the Tenant told him that she was going to be moving out at which time they told her she could not cancel her contract because there was no evidence that there were cockroaches in the rental unit. She called a couple more times and said she was moving out in January 2013. The Tenant did not pay the full rent for January as she only paid \$675.00. The Tenant vacated in January and returned the keys to the Landlord January 28, 2013.

The Landlord stated that they advertised the unit on the internet as soon as it was cleaned up and ready to rent. They were not able to find new tenants until March 13, 2013, when they entered into a new tenancy agreement effective April 1, 2013. They were not able to find a tenant sooner and re-rented the unit at \$1,300.00 per month which is \$50.00 lower than the Tenant's rent was. They are seeking to recover the unpaid rent for January 2013 of \$675.00 plus loss of rent for February and March 2013 for a total amount of \$3,375.00.

The Landlord advised that his office lost the move in and move out condition inspection report forms but they provided pictures which clearly show the stains left on the carpet by the Tenant. They had to have the carpets cleaned before they could re-rent the unit

so they are seeking to recover the \$224.00 for carpet cleaning as supported by the invoice they provided in their evidence.

The Landlord stated they are also seeking \$218.40 to pay for pest control that was not required. He noted that the pest control invoice states that no cockroaches were found and the only thing they found was some pantry moths in the area above the fridge.

The Tenant testified that she actually moved out of the rental unit on January 20, 2013 and not at the end of the month. She stated that she rented a place for a two week period from January 15 – 31, 2013 that is why she only paid half of a month's rent. She questioned why she was not served a 10 Day Notice if she was required to pay the full month's rent. She confirmed she first discussed her moving out with the Landlord in December 2012 and then on January 4, 2013 she told them she was moving out. When asked why she did not return the keys until January 28, 2013, the Tenant advised that she had left possession at the rental unit to be picked up by her friends, so she did not return the keys until all the possessions were gone.

The Tenant argued that she had to move out because the Landlord refused to deal with the cockroach infestation. She argued that the pest control company did not see cockroaches because they only come out at night. She noted that she had seen some during the day but that was only because they were kicked out of the nest. She said she did not seek assistance through dispute resolution to have the Landlord provide pest control because she did not think to do that. She did not put her requests for pest control in writing because she had already decided to move out.

Upon review of the photos provided by the Landlord the Tenant submitted that she was told the carpets had been cleaned before she moved in. She argued they were very old, worn out, and stained carpets. She stated that she did what was required of her, as listed in the move out cleaning list provided to her, because she had rented a steam cleaner and cleaned the carpets at the end of her tenancy. She confirmed that she did not provide receipts or copies of her credit card bill as evidence.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement.

Notwithstanding the Tenant's argument that she was no longer residing at the unit as of January 20, 2013, I find she remained in possession of the unit until January 28, 2013. Rent was payable on the first of each month in the amount of \$1350.00; however, the Tenant only paid \$675.00 towards the January 2013 rent, which I find to be a breach of section 26 of the Act. Accordingly, I award the Landlord unpaid rent in the amount of **\$675.00**.

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

In this case the fixed term did not end until May 31, 2013. The Tenant vacated the unit and relinquished possession of the unit, ending the tenancy on January 28, 2013, when she returned the keys. Based on the foregoing, I find the Tenant ended this tenancy in breach of section 45 of the Act, causing the Landlord to suffer a loss of rent. The Landlord attempted to re-rent the unit as soon as possible and was not able to secure new tenants until March 13, 2013 for a tenancy that is to begin on April 1, 2013.

Based on the foregoing, I find the Landlord has proven they suffered a loss of rental income due to the Tenant's breach of the Act. Accordingly, I award the Landlord loss of rent for February, and March, 2013, in the amount of **\$2,700.00** (2 x 1,350.00).

The Landlord has sought to recover \$218.00 which was paid for pest control services at the rental unit on February 6, 2013, which was the result of the Tenant's false accusations of the presence of cockroaches.

Notwithstanding the Tenant's witness statements and her argument that cockroaches only come out at night; I favor the Landlord's evidence which included a report from a pest control company and indicates there was no presence of cockroaches found in the rental unit. Based on the evidence before me, I find the Landlord's assertion that the presence of cockroaches was fabricated and later determined to be unfounded, to be probable given the circumstances presented to me during the hearing.

Section 21 of the *Residential Tenancy Regulation* stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on

the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Both parties confirmed they completed condition inspection report forms at move in and move out. The Landlord acknowledged that his office lost the forms and therefore he was relying on the photos provided in his evidence to support the condition of the carpet at the end of the tenancy. The Tenant testified that she was told the carpets had been cleaned prior to the start of her tenancy. Based on the foregoing and in the absence of evidence to the contrary, I accept the photos and submission of the Landlord that the Tenant left the carpets un-cleaned and stained at the end of the tenancy.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

As per the above, I find the Landlord has met the burden of proof and I award them damages in the amount of **\$442.00** (\$218.00 pest control + \$224.00 carpet cleaning).

I accept the Tenant's submission that she did not receive a copy of the move out form, which means the Landlord's right to claim damages against the deposit, was extinguished. That being said, in this case the Landlord claimed against the deposit for unpaid rent and not damages.

**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 Tenants' security deposit plus interest as follows:

Unpaid January 2013 rent	\$ 675.00
Loss of Rent Feb. & March 2013	2,700.00
Damages	442.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$3,867.00</b>
<b>LESS: Security Deposit \$675.00 + Interest 0.00</b>	<b><u>-675.00</u></b>
<b>Offset amount due to the Landlord</b>	<b><u>\$3,192.00</u></b>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$3,192.00**. 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: May 29, 2013

---

Residential Tenancy Branch

