



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlord: MNR, MND and FF  
Tenants: MNSD, MNDC and FF

### Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of March 8, 2013, the landlord sought a monetary award of \$5,000, raised by an amendment to his application on May 21, 2013 to \$25,000 for unpaid rent and damage to the rental unit and recovery of his filing fee.

By application of May 9, 2013, the tenant sought a monetary award for return of his security deposit in double under section 38(6) of the *Act* and recovery of his filing fee.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award as requested and whether the tenant is entitled to a monetary award for return of his security deposit and whether the amount should be double under section 38(6) of the *Act*.

### Background and Evidence

This tenancy began on March 1, 2012 under a fixed term agreement which ended on February 28, 2013 with the requirement that the tenant vacate at the end of the fixed term. However the parties subsequently agreed to extend the tenancy to February 28, 2014.

Rent was \$1,625 per month and the landlord holds a security deposit of \$820 paid on February 25, 2012. The rental unit is strata titled in a large building.

The primary matter in this dispute arises from the discharge of a fire safety sprinkler head in the master bedroom of the rental unit at approximately 2 a.m. on February 8, 2013 which caused extensive damage to the subject rental unit, a number of other rental units, and common areas in the building.

The tenant immediately attempted to notify the landlord, but unable to contact him, advised building security staff of the problem. The landlord provided the tenant with accommodate in another unit he owns for the balance of the tenancy.

The landlord alleges that the failure of the sprinkler system was a result of damage to it caused by tenant or his roommates. The tenant stated that the sprinkler head simply failed and that neither he nor his roommates had touched it.

The landlord stated that he currently had been able to substantiate a claim for part of the damage to his own suite but was still awaiting final claims from both his own insurance company and that of the strata corporation. He stated that he anticipates future claims in excess of \$25,000 and an application before the Supreme Court of British Columbia.

The landlord submitted a copy of a letter from the strata corporation's property management company dated February 20, 2013 advising that, since the rental unit owned by him was the source of the leak, they reserved the right to hold him responsible for the damage up to their insurance deductible of \$100,000.

The tenant gave evidence that he had purchased from the previous tenant the contents of the rental unit for which the landlord now makes claim. The landlord was adamant that he owned the contents.

As to the claim for unpaid rent, the landlord stated that the tenant had failed to pay the rent for August 2012, for which he submitted a copy of an NSF cheque, and for February 2013.

The tenant claims that on both occasions he had paid the rent in cash and that the confusion began when the landlord had attempted to cash a post-dated cheque in advance.

The tenant had provided a copy of a letter to the landlord dated February 28, 2013 providing his forwarding address and requesting return of his security deposit.

### Analysis

Claims in damages require that a number of factors be taken into account: whether the damage is proven to exist and is attributable to the tenant, whether amounts claimed are proven and reasonable and considered against move-in/move out condition inspection reports and normal wear and tear, among others.

In the present matter, I have no evidence as to whether the damage to the sprinkler head is attributable to the tenant. I believe it fair to assume that, given the very large claim from the strata corporation, that its insurance representatives would have examined the sprinkler head and perhaps had it examined by an expert to establish if it had contact damage or had simply failed. Such evidence had not been made available to the landlord at the time of the hearing, nor had the landlord been advised of the amount of the claim against him.

Therefore, without that critical evidence I cannot proceed to make a determination on the landlord's claim in damages and I must dismiss that part of the application. However, I find that provision of the key evidence was a result of the strata corporation not yet advising him of the total claim against him and beyond the power of the landlord. Therefore, I grant the landlord liberty to reapply, and preserve his right raise the matter to the Supreme Court of British Columbia if the amount claimed exceeds the jurisdictional limit of \$25,000 of the *Residential Tenancy Act*.

As both parties claim ownership of the contents of the rental unit, I would advise that they attempt to obtain the most credible evidence on the question as might be available.

As to the claims for unpaid rent for August 2012, in the absence of a demand letter or Notice to End Tenancy for unpaid rent, I find I cannot accept the landlord's explanation that he has been too busy with business to attend to the claim.

However, with respect to the rent for February 2013, in the absence of a receipt or other documentary proof that he paid the rent, I prefer the evidence of the landlord. His memory is fresher of the more recent event, he was considerate of the tenant in providing him with another unit after the water intrusion, and the tenant had left the tenancy without notice.

Therefore, I find that the landlord is entitled to a monetary award of \$1,625 for the unpaid rent for February 2013 or loss of rent for March 2013. As the application was premature and incomplete, I decline to award the filing fee.

As authorized under section 72 of the *Act*, I find that the landlord may retain the security deposit of \$820 in set off against the rent and grant a monetary order for the balance of \$805.

Having found that the landlord is entitled to retain the security deposit in set off against the unpaid rent, I must dismiss the tenant's application without leave to reapply.

### Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord's claims in damages are dismissed with leave to reapply as premature.

The landlord is awarded one month's rent of \$1,625, part by authorization to retain the tenant's security deposit in set off and the remainder by Monetary Order for \$805, enforceable through the Provincial Court of British Columbia for service on the tenant.

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 31, 2013

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Residential Tenancy Branch