



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR MNDC MNSD FF  
                                 MNDC MNSD FF

### Introduction

This hearing originally convened on March 27, 2013 and was adjourned to May 7, 2013 at the mutual request of the participants. The adjournment request was to allow the Landlord time to respond to the Tenant's application.

The hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed on April 23, 2013, seeking a Monetary Order for: unpaid rent or utilities; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenants.

The Tenants filed on January 4, 2013, seeking a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; the return of their security deposit; and to recover the cost of the filing fee from the Landlord for their application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

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

1. Should the Landlord be granted a Monetary Order?

## 2. Should the Tenants be granted a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: their written statement; Canada Post receipts; the tenancy agreement; move in and move out condition inspection reports; Tenant reimbursement for cleaning and locksmith; receipts for cleaning, carpet cleaning, and furnace/boiler repairs; and various e-mails and written correspondence between the parties.

The Tenants submitted documentary evidence which included, among other things, copies of: a CD of photos and videos; written correspondence, e-mails and text messages between the parties; a chronological list of events; photos; and a monetary order worksheet.

The following facts were confirmed during this proceeding and were not in dispute:

- The parties entered into a fixed term tenancy agreement that began on October 1, 2012 and was set to end on September 30, 2014;
- The Tenants paid to occupy the rental unit as of September 15, 2012;
- Rent was payable on the first of each month in the amount of \$3,200.00 and the Tenants paid a security deposit of \$1,600.00 on September 10, 2012;
- The parties attended a move in condition inspection and signed the report on September 14, 2012;
- The Tenants paid December 2012 rent in full;
- On December 16, 2012, the Tenants wrote the Landlord with a notice to end their tenancy effective December 17, 2012, which was sent regular mail to the Landlord on December 16, 2012;
- The Landlord received the December 16, 2012 letter on December 18, 2012 at which time they attended the rental unit and found it vacant with the keys left inside the unit;
- The Landlord conducted the move out inspection in the absence of the Tenants on December 18, 2012;
- The Tenants did not provide the Landlord with a forwarding address until they served the Landlord with their application for dispute resolution;
- The Landlord mailed the Tenants a copy of the move out inspection report with his evidence in response to the Tenants' claim;
- The parties agreed that the Tenants were entitled to \$426.67 as reimbursement for four days rent during which the heating system was being repaired;
- The parties agreed that the Landlord was entitled to \$168.00 for carpet cleaning;

The Tenant testified that they felt they had no choice but to break their lease and move elsewhere because of the water leak in the ceiling and the two gas leaks from the broken boiler. During that time his wife was thirty weeks pregnant and they had a three year old son so they could not risk having another gas leak while they were in the house or sleeping. He advised that they were very nervous living there and felt the repair person disrespected them.

The Tenant confirmed that after the second gas leak problem, he wrote the Landlord an e-mail on November 8, 2012 and requested that they not attempt to repair the boiler until after they moved out. He indicated in the e-mail that they would be out by December 1, 2012 and requested that no one enter the unit. He argued that the system was working at that time and they feared that it would leak again if any more attempts were made to fix the problem. He attempted to reach a mutual agreement to end the tenancy; however, the Landlord refused and informed them that they would be responsible for the terms of their fixed term lease.

The Tenant submitted that he was unsure of the dispute process. He acknowledged that he had sought guidance but did not understand everything until after they had moved out. He confirmed that they continued to occupy the rental unit past December 1, 2012 and vacated completely by December 17, 2012. They never sought the return of their security deposit because they thought it would be a wash, meaning they thought the Landlord would keep it for expenses. They have now applied for return of December rent of \$3,200.00; their security deposit of \$1,600.00; four days rent for lack of heat of \$426.67, and their moving expenses of \$450.00.

The Landlord testified that they are seeking liquidated damages in the amount of \$1,810.00 which includes \$19.00 credit check fee and \$1,791.00 administration fee charged to the owner for re-renting the unit. The tenancy agreement provides for \$3,200.00 in liquidated damages as a safety net because they always charge an owner half a month's rent for the administration fee to find new tenants plus additional charges for advertising, credit checks, and any other expense incurred to re-rent the unit. In this case they were fortunate to find new renters to occupy the unit as of January 15, 2013, after advertising on the internet and their corporate website; so the only additional charge was the credit check fee.

The Landlord is also seeking cleaning costs of \$125.00; carpet cleaning of \$168.00; plus lost rent for January 1 – 15<sup>th</sup>, 2013. He noted that the Tenants vacated prior to the end of the fixed term without notice and they did not provide contact information so they could schedule the move out inspection.

In closing, the Tenant disputed the requirement for additional cleaning charges and requested to settle the matter for the return of their security deposit. The Landlord refused the offer to settle and requested to proceed with their full claim.

### 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.

### **Landlord's claim**

Section 45 of the Act stipulates that a tenant may end a fixed term tenancy agreement by providing the landlord with written notice effective on a date that is not prior to the date of the end of the fixed term as agreed upon in the tenancy agreement.

In this case the Tenants vacated the property December 16<sup>th</sup> and 17<sup>th</sup>, 2012, twenty one (21) months prior to the end of the fixed term, in breach of Section 45 of the Act. The Landlord regained possession of the unit December 18, 2012 and re-rented the unit effective January 15, 2013.

Based on the above, I find the Landlord suffered a loss of rent as a result of the Tenants' breach in the amount of \$1,600.00. Accordingly, I award the Landlord loss of rent of **\$1,600.00**.

The tenancy agreement provided for liquidated damages of \$3,200.00 to accommodate room for the half of month's rent administration fee and costs incurred to re-rent the unit. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into.

I accept the Landlord's testimony that the amount being claimed is reasonable as the owner was charged \$1,791.00 administration fee plus the \$19.00 credit check fee in order to re-rent the unit as soon as possible to mitigate their loss. Accordingly, I award the Landlord **\$1,810.00** in liquidated damages.

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.

Notwithstanding the Tenant's submission that they cleaned the rental unit; after review of the evidence before me I accept the Landlord's submission that the unit required additional cleaning at \$125.00 and carpet cleaning at \$168.00. Accordingly, I award the Landlord cleaning costs of **\$293.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

**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:

Loss of rent January 1 – 15, 2013	\$1,600.00
Liquidated damages	1,810.00
Cleaning	293.00
Filing fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b><u>\$3,753.00</u></b>
<b>LESS: Security Deposit \$1,600.00 + Interest 0.00</b>	<b><u>-1,600.00</u></b>
<b>AMOUNT DUE TO THE LANDLORD</b>	<b><u>\$2,153.00</u></b>

#### **Tenants' claim**

The parties agreed that the Tenants were entitled to \$426.67 as reimbursement for four days rent during which the heating system was being repaired. Accordingly, I award the Tenants **\$426.67**.

In this case, I find that the Tenants failed to mitigate their loss as they chose not to work with the Landlord to have the repairs completed and did not seek a resolution through dispute resolution. Furthermore, there is no evidence to prove the Landlord breached the Act. Therefore, I find there is insufficient evidence to support the balance of the Tenants' claims and they are dismissed, without leave to reapply. Furthermore, I decline to award recovery of the Tenants' filing fee.

**OFFSET MONETARY AWARDS:**

Landlord's monetary award	\$2,153.00
Less Tenants' monetary award	<u>- 426.67</u>
<b>TOTAL DUE THE LANDLORD:</b>	<b><u>\$1,726.33</u></b>

Conclusion

The Landlord has been issued a Monetary Order in the amount of **\$1,726.33**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do 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 07, 2013

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Residential Tenancy Branch