



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, MNSD, MND, OLC, RPP, LRE, FF.*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, cost of painting and repairs, cleaning and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim.

The tenant applied for the return of rent, for the return of double the security deposit and for the filing fee. The tenant also applied for an order to restrict the landlord's right to enter the rental unit and for an order directing the landlord to comply with the *Act*, and return the tenant's property.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

During the hearing it was determined that since the tenancy had ended and that the landlord did not have the tenant's belongings in his possession, the portions of the tenant's application dealing with these issues were moot and accordingly dismissed.

### **Issues to be decided**

Is the landlord entitled to a monetary order for loss of income, cost of painting and repairs, cleaning and the filing fee? Is the tenant entitled to a monetary order for the return of rent and double the security deposit?

### **Background and Evidence**

The tenancy started on March 11, 2013 for a fixed term of 20 days that would end on March 31, 2013. The monthly rent was \$3,400.00. The tenant paid a security deposit of \$1,700.00.

A copy of the tenancy agreement was filed into evidence. An addendum to the tenancy agreement states that a move in fee of \$100.00 is payable by the tenant and that smoking and pets are not permitted inside the rental unit. By signing the addendum, the tenant also agreed to pay \$350.00 for cleaning if the unit was left unclean at the end of the tenancy and to pay \$65.00 for each unreturned fob.

The landlord testified that the rental unit is a fully furnished three bedroom apartment located in an upscale area. Smoking and pets are not permitted inside the building. The landlord stated that shortly after the tenancy started, he visited the unit on two occasions to provide a television set and later to pick up a signed strata form. During both visits, the landlord smelt smoke inside the rental unit and gave the tenant verbal warnings. Since this tenancy was short term, the landlord continued to look for tenants for April 01, 2013 and showed the unit to prospective tenants. During one showing the party viewing the unit refused to rent it because of the smell of smoke.

The tenant stated that he went on vacation on March 16, 2013. The tenant filed a copy of his itinerary which was booked on February 06, 2013. I asked the tenant the reason for entering into a tenancy agreement for the period of March 11 to March 31 when he was already booked to go on vacation just five days into this 20 day tenancy and was due to return the evening before the end of tenancy. The tenant stated that to avoid driving home after consuming alcohol, he decided to rent the apartment which was close to the area that he partied at.

The tenant filed copies of text messages between the two parties. Based on these messages, I find that on March 19, 2013, the tenant informed the landlord that he would be away until March 30, 2013 and that his roommate had left the Province on March 18, 2013 and would be back in "a week or so". In this same message, the tenant advised the landlord that he had given his set of keys to his cousin RY and had authorized RY to act on his behalf. The tenant stated in the message "*I trust him (RY) with my life*".

The landlord testified that he met RY at the rental unit on March 20, 2013. RY removed the tenants' belongings and returned the tenant's set of keys to the landlord. At the time of the hearing the landlord had not received the roommate's set of keys. The landlord stated that RY refused to do an inspection and when he asked RY about cleaning the unit, RY told the landlord to keep the security deposit.

The landlord stated that the unit was left in a very messy condition. Cigarette ash was scattered thorough out the unit and there were alcohol stains on the kitchen and hardwood floors. There were cigarette butts in the balcony, scratches on the walls and burn marks on the leather sofa.

The landlord stated that shortly after his meeting with RY, he received a letter from the strata council dated March 18, 2013, regarding complaints received from other occupants of the complex. The letter states that several parties were held at the rental unit that lasted until the wee hours of the mornings of March 13, 14, 16 and 17. Complaints of loud banging, screaming, nonstop swearing, singing, laughing, talking loudly and the barking of a small dog were described in the letter.

The landlord had advertised the availability of the unit on the internet and at the end of March; he was contacted by a rental agency for a viewing. The agent who conducted the viewing informed the landlord in writing that the unit smelled of smoke and needed to be repainted and that due to the odour of smoke, the prospective tenant refused to rent the unit. This agent also testified as a witness at the hearing and reiterated that she informed the landlord that she would not be showing the unit until the odour of smoke was eliminated.

The tenant argued that neither he nor his visitors smoked inside the rental unit and that he did not have a dog. The landlord filed photographs of cigarette ash on the floors and stubbed cigarette butts on the balcony floor.

The landlord testified that the rental unit was painted at the end of February 2013, just prior to the start of this tenancy. However in order to remove the smoke damage and odour, the landlord stated that he had to repaint the entire unit.

The landlord stated that all the linen in the furnished unit had to be dry cleaned to eliminate the smell of smoke. In addition, some bed linen was blood stained and had to be replaced after attempts to dry clean failed to remove the stains.

The landlord has filed receipts and photographs to support his claim for the following:

1.	Painting	\$2,500.00
2.	Replacement of bed linen	\$520.77
3.	Dry cleaning	\$327.18
4.	Replace leather sofa	\$450.00
5.	Cost of fob	\$65.00
6.	Move in fee	\$100.00
7.	Cleaning	\$350.00
8.	Loss of income for April	\$3,600.00
9.	Filing fee	\$100.00
	<b>Total</b>	<b>\$8,012.95</b>

The tenant is claiming the following:

1.	Return of rent for March 20-31	\$2,483.87
2.	Security deposit	\$1,700.00
3.	Filing fee	\$50.00
	Total	<b>\$4,233.87</b>

### **Analysis**

#### Landlord's application:

##### 1. Painting - \$2,500.00

Even though the tenant denied having smoked inside the rental unit and stated that his guests did not smoke inside the rental unit, based on the documentary evidence and verbal testimony of the witness, I find that on a balance of probabilities, there was a strong odour of smoke inside the unit. In order to re rent the non smoking unit in this non smoking building, the landlord was required to repaint the entire unit.

The landlord has filed a receipt for the cost of painting. I award the landlord his claim for painting.

##### 2. Replacement of bed linen - \$520.77

Based on the photographs filed by the landlord, I find that one set of bed linen was blood stained and had to be replaced. However, I find that the landlord's claim is excessive. Even though the landlord stated that the unit is "high end", I find that \$300.00 is reasonable for the purchase of one set of bed linen. Accordingly, I award the landlord \$300.00 towards his claim.

##### 3. Dry cleaning - \$327.18

Due to the odour of smoke in the rental unit, I find that the landlord was required to dry clean all the linen that was the unit was furnished with. The landlord has filed a receipt for the cost of dry cleaning. I find that the landlord is entitled to this claim.

##### 4. Replace leather sofa - \$450.00

The landlord stated that the leather sofa had cigarette burns and he found a replacement sofa for sale, on the internet. The landlord filed a copy of the emails regarding the purchase of the sofa. I find that the landlord has established a claim for the cost of the sofa.

5. Cost of fob - \$65.00

The landlord filed a letter from the building manager to confirm the cost of the fob. Since the tenant's roommate did not return the fob, the landlord is entitled to \$65.00 to replace it.

6. Move in fee - \$100.00

As per the addendum, the tenant is required to pay a move in fee to the strata council. The landlord stated that the tenant did not pay the fee. Therefore I award the landlord his claim in the amount of \$100.00.

7. Cleaning - \$350.00

As per the addendum, the tenant must pay for cleaning in the event the unit is left unclean at the end of the tenancy. The tenant's agent RY did not clean the unit when he returned the keys and therefore the tenant must cover the cost of cleaning.

8. Loss of income for April - \$3,600.00

The rent paid by the tenant was \$3,400.00. The tenancy agreement states that at the end of the fixed term, the tenancy may continue on a month to month basis. Accordingly the tenant is bound by section 45 of the Act with regard to ending the tenancy. Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

In this case the tenant did not provide any notice to the landlord. The tenant went on vacation and authorized RY to act on his behalf. RY removed the tenants' belongings and returned a set of keys, thereby ending the tenancy without notice as per section 45.

In addition, the tenant left the unit in a condition that it could not be re rented immediately. The unit had to be repainted and refurnished. The landlord mitigated his losses by continuing to show the unit to prospective tenants but did not find a tenant for April. Therefore I find that the tenant is responsible for the loss of income suffered by the landlord for April. The landlord has claimed \$3,600.00 for the loss he suffered. However since the rent was \$3,400.00 I award the landlord this amount.

Filing fee \$100.00

The landlord has proven his claim and is therefore entitled to the recovery of the filing fee.

Overall the landlord has established the following claim:

1.	Painting	\$2,500.00
2.	Replacement of bed linen	\$300.00
3.	Dry cleaning	\$327.18
4.	Replace leather sofa	\$450.00
5.	Cost of fob	\$65.00
6.	Move in fee	\$100.00
7.	Cleaning	\$350.00
8.	Loss of income for April	\$3,400.00
9.	Filing fee	\$100.00
	<b>Total</b>	<b>\$7,592.18</b>

Tenant's application:

1. Return of rent for March 20-31 - \$2,483.87

The tenant stated that by taking back the keys to the rental unit on March 20, 2013, the landlord ended the tenancy and locked the tenant out, despite having collected rent from the tenant for March 11- March 31. Accordingly, the tenant stated that he should be reimbursed for rent for the period when he did not have access to the rental unit.

Based on the text message filed into evidence by the tenant himself, I find that the tenant authorized RY to act on his behalf. RY removed the tenants' belongings and returned one set of keys to the landlord, thereby ending the tenancy. Since I find that the tenant's agent ended the tenancy, the tenant is not entitled to the return of rent.

2. Security deposit - \$1,700.00

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of both parties, I find that the landlord received the forwarding address of the tenant on April 18, 2013 and failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$1,700.00 and is obligated under section 38 to return double this amount. Therefore the tenant has established a claim of \$3,400.00.

Since the tenant has proven a portion of his claim, I award him a portion of the filing fee.

Over all the tenant has established a claim as follows:

1.	Return of rent for March 20-31	\$0.00
2.	Security deposit	\$3,400.00
3.	Filing fee	\$25.00
	Total	<b>\$3,425.00</b>

Overall, the landlord has established a claim of \$7,592.18 and the tenant has established a claim of \$3,425.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$4,167.18 which consists of difference in the established entitlements of both parties.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord a monetary order in the amount of **\$4,167.18**.

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: June 04, 2013

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Residential Tenancy Branch