



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the landlord: MNSD, MNDC, MNR, MND, FF  
For the tenant: MNSD, MNDC, FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss, damage to the rental unit, and for unpaid rent, and for recovery of the filing fee.

The tenant applied for a return of her security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue*-The landlord's application for dispute resolution listed a monetary claim of \$4150; however the landlord submitted documentary evidence which reduced their monetary claim to \$2324. I confirmed this amount with the landlord at the beginning of the hearing, and he agreed that this was the amount of his amended monetary claim.

During the hearing, the landlord's spouse attempted to add a claim for liquidated damages. I refused this request of the landlord to amend their application as the hearing was well underway when this request was made. The rules of administrative fair play and natural justice, as well as the Rules of Procedure, require that the tenant

know of the claim against her and have the opportunity to respond, which would be one of the purposes of listing a monetary claim in the application.

*Preliminary issue #2*-The tenant submitted oral and documentary evidence stating that the landlord's application for dispute resolution and Notice of Hearing letter was not served upon her, having found out about the application when she filed her own application for dispute resolution. The tenant submitted that the landlord incorrectly spelled her name on the registered mail envelope and therefore Canada Post would not release the envelope to her.

I informed the tenant that I would not consider her request that the landlord's application be dismissed; however, I gave the tenant an opportunity for an adjournment of the hearing in order to require the landlord to properly serve the tenant in a manner required by section 89 of the Act.

The tenant declined this offer and stated that she wished to proceed with the hearing, as she had in fact received a copy of the landlord's application and evidence from the Residential Tenancy Branch ("RTB") when filing her application.

#### Issue(s) to be Decided

1. Is the landlord entitled to authority to retain the tenant's security deposit, to a monetary order, and to recover the filing fee?
2. Is the tenant entitled to a monetary order, to a return of her security deposit, and to recover the filing fee?

#### Background and Evidence

The evidence showed that the tenant moved into the rental unit on August 1, 2010, the ending monthly rent was \$1550, and that the tenant paid a security deposit of \$750 on June 29, 2010.

The parties confirmed they entered into a series of fixed term tenancy agreements each year before the end of the prior fixed term, which required the tenant to vacate the rental unit.

The latest fixed term tenancy agreement shows that the tenancy began on October 1, 2012, and was to end on September 30, 2013. The tenancy agreement required the tenant to vacate by the end of the fixed term. The tenancy actually ended on March 31, 2013, when the tenant vacated the rental unit.

The rental unit was the upper suite of a side-by-side duplex, and the landlord also rented the lower suite of the duplex.

*Landlord's application-*

The landlord's monetary claim is in the amount of \$2324, as follows:

Loss of revenue, April '13	\$1550
Difference in rent, balance of fixed term	\$250
Blind cleaning	\$262
Floor repair	\$262
<b>Total</b>	<b>\$2324</b>

The landlord's relevant documentary evidence included the latest tenancy agreement, showing that the tenancy began on October 1, 2012, and was a fixed term until September 30, 2013, an email to the landlord from the lower tenants, on November 24, 2012, mentioning, among other things, an issue with the tenant, another email from the lower tenants, a copy of a letter from the tenant to the lower tenants, a notice of termination from the lower tenants, a notice of early termination from the tenant, billing information from an online advertising site and a local newspaper, a blind cleaning invoice, a note from a floor repair company, and a condition inspection report.

*Loss of rent revenue (labeled unpaid rent by the landlord); difference in rent-*

The landlords submitted that they are entitled to loss of revenue for April, as the tenant did not complete the fixed term of the tenancy agreement, when she gave her written notice on February 23, 2013, that she was vacating the rental unit by March 31, 2013.

The landlords contended that they advertised the rental unit immediately on free online advertising sites and in the local newspaper. The landlords further submitted that they advertised the rental unit for 4 weeks listing a monthly rent of \$1550, and then later reduced the monthly rent to \$1550, which successfully led to a new tenancy beginning on May 1, 2013.

The landlord stated that they are entitled to loss of revenue April for \$1550 and the difference in rent from the tenant's monthly rent to the monthly rent currently being paid, through the end of the fixed term, in the amount of \$250, as the earliest the rental unit could be re-rented was May 1, 2013.

In response, the tenant contended that she had a right to end the fixed term tenancy due to the material breach of a term in the tenancy agreement by the landlords. The material term was the lack of quiet enjoyment, which the landlords failed to ensure.

The tenant further submitted that she called the landlord's wife in February as she was acting in the place of the landlord while he was away, and according to the tenant, the landlord's wife said that she would be okay in ending the tenancy as the suite was always rented without effort. As there remained unresolved noise issues with the lower tenants, the tenant did issue her notice.

The tenant also said that the landlords were unsuccessful in renting the rental unit for April, as they listed the suite incorrectly. In explanation, the tenant said that the landlords described the suite in the advertisements as one half of a duplex, when instead the suite was ¼ of a duplex, as it was the upper suite, and there was a lower suite and an adjoining upper and lower suite.

The tenant argued that there were many showings, but that no one was interested when they discovered the rental unit had been incorrectly advertised. In particular, one advertisement listed the rental unit as 9000 square feet.

In response, the landlord said that in his view, the issues with the noise from the lower tenants were being resolved as the lower tenants had issued their notice to vacate.

*Blind repair*-The landlords contended that the tenant did not properly clean the blinds, which required that he hire a company to clean them. The landlord also argued that the tenant agreed to pay for the blind cleaning.

In response, the tenant said that she agreed to pay \$100 for the blind cleaning, as the landlord had misinformed her about the costs, saying that the standard charge was \$100.

*Floor repair*-The tenant agreed to accept this charge.

*Tenant's application*-

The tenant's monetary claim is as follows:

25% of monthly rent for 7 months, loss of quiet enjoyment	\$2712.50
Moving costs	\$347.97
Curtain rods	\$100
Filing fee	\$50
Total	\$3110.47

The tenant also requested a return of her security deposit, less the amount she agreed to for floor repair and blind cleaning.

The tenant's relevant documentary evidence included character reference letters from a former neighbours, a written submission of her claim, a letter to the tenants living below at the time in question, regarding noise concerns with these tenants, another letter to these tenants explaining that she was not the person knocking on their door, an email from the landlord to one of the tenants living in the lower suite dated January 5, 2013, requesting a meeting with all this tenant and the two tenants living below, a letter to the landlord signed by this tenant and the two tenants living below explaining that all three

tenants attempted to resolve their differences, were unsuccessful, and had therefore requested a meeting with the landlord with no success, other written submissions, and moving truck receipt.

*Loss of quiet enjoyment*-The tenant claimed that she suffered a devaluation of her tenancy for 7 months, as the landlord failed to attend to the noise issues between her and the tenants living in the suite below.

The tenant said that these tenants were much younger, with the tenant being 63 and the tenants in the lower suite 23-24 years of age. With the difference in ages naturally comes a different lifestyle, such as the tenants below playing loud video games and music, according to the tenant.

The tenant said that she had lived in the rental unit for 2 ½ years, and did not have the noise problems she experienced with the tenants in question. Nonetheless, the tenant submitted that they attempted to resolve their problems themselves, at the landlord's suggestions, but these attempts were unsuccessful.

These unsuccessful attempts lead to the tenant calling the landlord in December 2012, and that the landlord said there would be a meeting with all three tenants.

The tenant said she called the landlord in January 2013, requesting a meeting, but that a meeting never took place. The tenant contended that the landlord never offered a solution to the issues between the two parties, which ultimately cause both sets of tenants to issue the landlord notices that they were vacating.

The tenant said that all times since she has lived in that rental unit, she controlled her noise, she did not wear shoes in the house, and was respectful of the tenants living below.

The tenant referred to her letter signed by the two tenants living below at the time, in which those tenants corroborated that there was to be a meeting with the landlord, but that he failed to arrange such a meeting.

In response, the landlord contended that he received complaints from both sets of tenants, and although he did not have a meeting with the group, he made phone calls to the tenants living below and met individually.

The landlord agreed that he never arranged a meeting with both sets of tenants, but that he was ill for 6 weeks and the tenant was out of town for 3 weeks.

*Moving costs*-The tenant submitted that it was not her intention to move early, but that the inaction of the landlord in addressing the issue of quiet enjoyment led her to move, for which she is entitled to reimbursement.

The landlord denied that he was responsible for moving costs.

*Curtain rods*-I have not considered this issue as the landlord agreed to return the tenant's curtain rods.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

### *Landlord's application-*

*Loss of rent revenue; difference in rent*-As to the landlord's claim that he is entitled to loss of rent revenue for April, Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In other words, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

However, the landlord is required under section 7(2) of the Act to take reasonable measures to minimize their loss, such as with immediate advertising of the rental unit for re-rent.

In the case before me, I find the landlord submitted insufficient evidence they satisfactorily advertised the rental unit, as they have not submitted the actual advertisements in order that I may view the content of the advertisement; rather the landlord submitted only proof that the rental unit was advertised.

As I was unable to view the content, I accept the tenant's testimony that the rental unit was incorrectly advertised as  $\frac{1}{2}$  of a house, instead of the actual rental unit, which was  $\frac{1}{4}$  of the house. I also took into account that the landlord did not disagree with the tenant's assertions and that the rental unit was mistakenly listed as 9000 square feet.

As I have found that the landlord did not correctly advertise the rental unit, I find that the landlord did not sufficiently take reasonable steps to minimize his loss and I dismiss his request for loss of revenue for April and for the rent difference for the balance of the fixed term.

As I have dismissed the landlord's claim for loss of rent revenue and rent difference, I have not addressed the tenant's claim that she was entitled to end the tenancy earlier than the end of the fixed term due to an alleged breach of a material term of the tenancy agreement by the landlord.

*Blind cleaning*-In reviewing the condition inspection report, the blinds were listed as in satisfactory condition, both at the move-in and the move-out inspection. There were no notations or photographic evidence that indicated the blinds were not clean at the end of the tenancy, as required of the tenant. As the tenant, however, agreed to pay \$100 for blind cleaning, I find the landlord is entitled to a monetary award of \$100.

*Floor repair*-As the tenant agreed to this amount, I award the landlord compensation of \$262 as requested.

As I have dismissed the landlord's monetary claims, with the exception of the floor repair and the blind cleaning for \$100, I decline to award the landlord recovery of the filing fee.

#### *Tenant's application-*

*Loss of quiet enjoyment*-A breach of quiet enjoyment includes when a tenant's right to enjoy their premise in peace and without unreasonable disturbance. Temporary discomfort or inconvenience does not constitute a breach of a tenant's quiet enjoyment; however, substantial interference or ongoing disturbances can constitute a breach of a tenant's right to quiet enjoyment. Ongoing and unreasonable noise could result in the loss of a tenant's right to quiet enjoyment.

A landlord is required to balance and protect the rights of each tenant. While a landlord would normally not be held responsible for the actions of other tenants, a landlord must take reasonable steps to address and correct a situation where the landlord is aware that one tenant is unreasonably disturbing another tenant.

Section 47 of the *Act* provides that a landlord may end a tenancy by issuing a one month Notice to End Tenancy for Cause. One of several grounds that can be identified as a basis to end a tenancy is the ground that the tenant has significantly interfered with or unreasonably disturbed another occupant.

I do not find it reasonable that the landlord expects the tenants here and the tenants in the basement suite to resolve their own difficulties, given the number of complaints having to be made by the tenants. I do not find it an adequate response by the landlord that he was ill, as the landlord may appoint an agent to attend to landlord responsibilities in his incapacity.

I am therefore satisfied that the landlord did not take appropriate and reasonable steps to address the concerns and complaints of the tenants, and therefore I find that the tenant suffered a loss of her quiet enjoyment.

With respect to the tenant's request for monetary compensation for a loss of her quiet enjoyment and a subsequent devaluation of her tenancy, as I have found that the landlord's lack of taking effective corrective steps have led to the tenant's loss of quiet enjoyment, I find it reasonable that the tenant is entitled compensation for a devaluation of her tenancy.

Residential Tenancy Policy Guideline 6 states the determination of the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation and the length of time over which the situation has existed.

Additionally the arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises.

I find a reasonable amount of compensation for that devaluation to be \$300 per month, from December 2012 to the end of the tenancy, March 2013, less the three weeks when the tenant was out of town. I have not awarded the tenant compensation for any months prior to December as the first proven contact with the landlord concerning this issue was in that month.

I therefore find the tenant has established a monetary claim of \$975 (\$300 for each December 2012, January, February, and March 2013 = \$1200, less 3 weeks, or \$225) for a loss in the value of the tenancy for those months.

*Moving costs-* As to the tenant's claim for moving expenses, these are choices the tenant made, both in entering into a tenancy and ending a tenancy, on how to facilitate her moving and I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant.

I dismiss the tenant's claim for \$347.97.

I find that the tenant is entitled to a return of her security deposit of \$750, which was held in trust for the tenant pending the outcome of this hearing.

As I find merit with the tenant's application, I award her recovery of the filing fee of \$50.



*Both applications-*

Due to the above, I find landlord is entitled to a monetary award of \$362, comprised of floor repair for \$262 and blind cleaning for \$100.

I find the tenant is entitled to a monetary award of \$1775 comprised of compensation for her loss of quiet enjoyment for \$975, the filing fee of \$50, and the tenant's security deposit of \$750.

I have offset the landlord's monetary award of \$362 from the tenant's monetary award of \$1775, and I therefore grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$1413, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement may be recoverable from the landlord.

Conclusion

The landlord has been granted a monetary award of \$362.

The tenant has been granted a monetary award of \$1775.

The landlord's monetary award is offset from the tenant's monetary award and the tenant is granted a monetary order for \$1413.

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: July 11, 2013

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Residential Tenancy Branch

