



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Hunter McLeod  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

**MNR, MNSD, FF**

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting return of the security deposit and to recover the filing fee cost.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing I have considered all of the evidence and testimony provided.

There was no dispute that each party received Notice of hearing served by the other.

### Preliminary Matters

The detailed calculation of the landlord's claim indicated that the landlord had requested compensation for damage or loss under the Act (loss of rent revenue,) and for damage to the rental unit. There was no claim for unpaid rent.

At the conclusion of the hearing the tenant asked if the arbitrator could remain on the conference call line to have a discussion. It was explained that I was willing to respond to any questions the tenant might have, but that this could not occur in the absence of the other party. The tenant was given the opportunity to make additional submissions and to ask questions, but declined to do so.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to compensation for loss of rent revenue?

May the landlord retain the deposit or is the tenant entitled to return of the deposit?

Is the landlord entitled to filing fee costs?

Background and Evidence

The fixed-term tenancy commenced on March 1, 2013, rent was \$505.00 per month, due on the 1<sup>st</sup> day of each month. A deposit in the sum of \$252.50 was paid. A copy of the tenancy agreement was not supplied as evidence.

The parties agreed that a move-in condition inspection report was completed and a copy given to the tenant. A copy was not supplied as evidence.

The tenant paid April 2013 rent and on April 26, 2013 she gave the landlord a letter indicating that she would vacate effective April 30, 2013, as the unit had a mold problem. The landlord confirmed receipt of the notice on April 26 2013. A copy of the tenant's letter was supplied as evidence.

The landlord did not attempt to schedule a move-out condition inspection report with the tenant, as she could not reach her by telephone and believed the tenant had vacated the unit. The landlord did post a notice of entry and on May 2, 2013 she went into the unit and found the keys.

The landlord has made the following claim:

- \$505.00 – loss of May 2013 rent revenue;
- \$35.00 – suite cleaning; and
- \$73.50 carpet cleaning.

The landlord has claimed the loss of May 2013 rent as they did not have the time to locate a new occupant for the unit. The unit was not successfully re-rented until July 1, 2013.

Clause 23 of the tenant agreement was read by the landlord. This clause required the tenant to have the carpets professionally cleaned at the end of the tenancy, if the carpets had been professionally cleaned at the start of the tenancy. The landlord did not supply evidence of the cleaning completed at the start of the tenancy and did not supply a copy of an invoice for carpet cleaning completed at the end. The tenant did not have the carpets cleaned; she had lived in the unit for 2 months. The landlord said it is their

practice, no matter the length of a tenancy, to expect the carpets to be professionally cleaned.

The landlord said that the unit required cleaning; however an invoice for the cleaner was not supplied.

The tenant said that she spoke to the landlord on 3 occasions to complain about a mold problem; the tenant had asked to have the carpets replaced. The tenant had been told by another occupant of the building that the unit she rented had flooring issues as the result of 3 past floods and that the smell was making her feel sick and permeating her furniture and clothing.

The tenant became so frustrated that she issued her written notice. No prior written notice, requesting repair, had been given to the landlord.

The tenant had been to the unit after she vacated and saw that the flooring had been replaced; the landlord said only the entry carpet was replaced with lino; the tenant said the whole unit had new flooring. The tenant suggested this proved her claim that the unit had a mold problem.

The tenant confirmed that she did not supply a written forwarding address; the landlord was only able to confirm the address, as the result of the dispute resolution hearing package that had been served to them on April 28, 2013. The tenant said she served the landlord with the hearing package on April 26, 2013. The landlord applied claiming against the deposit on May 6, 2013.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

There was no evidence before me that the landlord had had the carpets professionally cleaned prior to the tenancy. In the absence of verification of invoices, supporting the claims made by the landlord I find that the claim for carpet cleaning and cleaning is dismissed. During the hearing the landlord offered to supply copies of invoices; this offer was declined as that evidence is expected to be supplied to the other party and Residential Tenancy Branch at least 5 days prior to the hearing.

In relation to the notice the tenant gave to end the fixed term tenancy, I have considered section 45(3) of the Act, which provides:

*(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

The tenant believed that the landlord was not properly responding to her concerns and felt that she must vacate. However, April 26, 2013 was the only occasion that the tenant gave the landlord any written notice of the landlord's failure to provide proper repair, as required by section 32 of the Act. The tenant may have discussed her concerns with the landlord, but section 45(3) requires a tenant to place the concerns in writing, to allow the landlord a reasonable period of time to address repair. If a landlord fails to do so and a tenant has clear evidence of a breach of a material term of a tenancy, the tenant may end a fixed-term tenancy. That did not occur in this case and as a result I find that the tenant ended the tenancy in breach of the Act.

The tenant's breach of the Act does not automatically entitle the landlord to compensation. Section 7 of the Act requires the landlord to mitigate the loss claimed, by seeking out a new occupant as quickly as possible. In the absence of any evidence of advertising or submission in relation to the efforts made to locate a new occupant, I find that the landlord is entitled to reasonable compensation of rent revenue for the 1<sup>st</sup> 2 weeks of May, 2013 in the sum of \$252.50. The tenant's short notice would not have allowed the landlord to locate a new occupant for May 1, but there was no evidence before me that any advertising occurred in May.

In relation to the deposit; the landlord had a responsibility, once the written notice ending the tenancy was supplied on April 26, 2013, to schedule a move-out condition inspection. I have rejected the landlord's submission that the tenant had vacated and could not be reached to schedule an inspection. The tenant had paid rent for the month of April and had legal possession of the unit. Just as the landlord had posted notice for entry; I find that the landlord could have posted notice of at least 2 opportunities for the inspection, as required by section 35 of the Act.

Section 36 of the Act provides consequences when condition inspection report requirements are not met. When a landlord fails to offer the tenant at least 2 opportunities to complete an inspection at the end of the tenancy the landlord's right to claim against the deposit for damages is then extinguished. Therefore, as the landlord did not offer any opportunity for the inspection I find that the landlord extinguished their right to claim against the deposit for damages. The Act then requires a landlord to return the deposit within fifteen days of receipt of the written forwarding address.

Once the tenant had vacated she did not supply the landlord with a written forwarding address. I find that the tenant's application requesting return of the deposit was then premature, as she could only request return of the deposit once the address had been given. Even though the landlord had extinguished their right to claim against the deposit; the tenant was not relieved of the need to provide the written forwarding address. If the tenant had given a forwarding address the landlord would have had fifteen days in which to return the deposit.

Therefore I find that the landlord is entitled to compensation in the sum of \$252.50 for loss of the first 2 weeks of May 2013 rent revenue and that the balance of the claim is dismissed.

The landlord may retain the deposit in satisfaction of the claim.

As the landlord's application has merit I find that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$50.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to compensation for loss of rent revenue in the sum of \$252.50; the balance of the landlord's claim is dismissed.

The landlord is entitled to retain the security deposit; therefore, the tenant's application is dismissed.

The landlord is entitled to filing fee costs.

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 19, 2013

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Residential Tenancy Branch