



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on May 1, 2013. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Are there damages to the unit and if so how much?
4. Is the Landlord entitled to compensation for the damage and if so how much?
5. Are there other losses or damages and is the Landlord entitled to compensation?
6. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on September 1, 2012 as a fixed term tenancy with an expiry date of August 31, 2013. Rent was \$1,550.00 per month payable in advance of the 31<sup>st</sup> day of each month. The Tenant paid a security deposit of \$775.00 on September 7, 2012.

The Landlord said the Tenant moved out of the rental unit during March, 2013 and was completely moved out on March 31, 2013. The Landlord said the Tenant did not give him proper written Notice to End the Tenancy and he did not agree to end the fixed term tenancy before the expiry date of August 31, 2013.

The Landlord continued to say he was unable to rent the unit until May 16, 2013 therefore he is requesting the Tenant pay the unpaid rent for March, April and ½ of May,

2013. The Landlord said the Tenant is responsible for this rent as they had a fixed term tenancy agreement to August 31, 2013 and the Tenant broke the tenancy agreement in March, 2013 when she moved out of the unit. The Landlord said he and his associate advertised and showed the unit 2 times in March, 2013, 4 times in April, 2013 and twice in May, 2013 before finding a new tenant.

As a result the Landlord said he is claiming unpaid rent for March, 2013 of \$1,550.00, unpaid rent for April, 2013 of \$1,550.00 and unpaid rent for May, 2013 of \$775.00. The Landlord continued to say he is also claiming \$172.25 for cleaning charges and \$100.00 for wall repairs and painting. The Landlord said he included paid receipts for both these claims.

In addition the Landlord said the tenancy agreement states the Tenant is required to pay a move in and move out strata management fee of \$200.00 and an administration fee of \$100.00 as liquidated damages to cover advertising and administrative fees if the Tenant cancels the tenancy early.

The Landlord said his total claim is \$4,447.25 plus the \$50.00 filing fee for the application.

The Landlord also requested to retain the Tenant's security deposit of \$775.00 as partial payment of the unpaid rent.

### Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenant did not give the Landlord proper notice to end the tenancy and the Tenant does not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the unpaid rent of \$1,550.00 for March, 2013, for unpaid rent of \$1,550.00 for April, 2013 and for unpaid rent of \$775.00 for May 1, 2013 to May 15, 2013. I award the Landlord total unpaid rent of \$3,875.00 in unpaid rent.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the

respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord has provided paid receipts for his claim for the carpet cleaning in the amount of \$172.25 and the painting in the amount of \$100.00. As well the tenancy agreement addendum has clauses regarding the \$200.00 move in and move out strata fee and the cancelation fee of \$100.00 if a tenant cancels the tenancy before the fixed term agreement ended which in this case is August 31, 2013. The Landlord said this is not a penalty but covers his time and expenses to advertise and show the property to potential new tenants. I accept the Landlord's evidence and testimony and award the Landlord the \$172.25 for carpet cleaning, \$100.00 for painting, \$200.00 for strata fees and the \$100.00 for liquidated damages for the Tenant breaking the tenancy agreement.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit as partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 3,875.00
	Carpet cleaning	\$ 172.25
	Painting costs	\$ 100.00
	Strata Fees	\$ 200.00
	Liquidated damages	\$ 100.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$4,497.25
Less:	Security Deposit	\$ 775.00
	Subtotal:	\$ 775.00
	Balance Owing	\$ 3,722.25

Conclusion

A Monetary Order in the amount of \$3,722.25 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 23, 2013

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Residential Tenancy Branch