



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenant   MNDC, MNSD, RR, O  
                                 Landlord   MNR, MNSD, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for unpaid rent, to retain the Tenant's security deposit as partial payment of the unpaid rent and to recover the filing fee for this proceeding.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the return of the Tenant's security deposit, for a rent reduction and for other considerations.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on August 19, 2013, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by posting the package in the Landlord's mail box on his door on July 26, 2013 in accordance with section 89 of the Act.

The Tenant and the Landlord confirmed that they had received the other party's hearing packages.

### Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?
2. Is the Landlord entitled to unpaid rent and if so how much?
3. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Are there damages or losses to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?
3. Is the Tenant entitled to the return of the security deposit?
4. Is the Tenant entitled to a rent reduction?

### Background and Evidence

This tenancy started on July 1, 2013 as a fixed term tenancy for 1 year with an expiry date of June 30, 2014. Rent was \$800.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$400.00 on June 25, 2013. No condition inspection reports were completed and the Tenant has not given the Landlord a forwarding address in writing.

The Tenant said that they signed an application to rent on June 13, 2013 and then signed the tenancy agreement on June 25, 2013 for a tenancy starting on July 1, 2013 and ending on June 30, 2014. The Tenant said she had viewed the rental unit prior to signing the tenancy agreement. Both parties said the Tenant started moving in prior to July 1, 2013 after the tenancy agreement was signed. The Tenant continued to say the rental unit was not ready for occupancy and the repairs and renovations that had been discussed with the Landlord were not done. The Tenant said the toilet was not installed in the bathroom, the counter tops were not repaired, the furnace was not working, the fridge and stove smelled and the floor needed repair. The Tenant said because these repairs were not done prior to move in she delivered a letter to the Landlord on July 26, 2013 indicating that she was ending the tenancy. The letter does not state the date the Tenant wanted to end the tenancy or when the Tenant was moving out, but indicates that she is moving when she finds alternative accommodation.

The Tenant said that as a result of repairs and renovation not being completed as discussed with the Landlord, she moved out of the rental unit and is now requesting the return of her July, 2013 rent of \$800.00 and the return of her security deposit of \$400.00. The Tenant said she is requesting \$1,200.00 from the Landlord because the

rental unit was not livable and the Landlord did not do what he said he would do to get the rental unit prepared for the Tenant.

The Tenant provided a witness at the start of the hearing, who was told to remove herself from the hearing until her testimony was required. When the Witness was called to give testimony it was discovered that the Witness did not remove herself from the hearing and she had heard all the proceedings from the start of the hearing. The Arbitrator disallowed the Witness to testify because the Witness' testimony could be tainted by what she heard in the hearing prior to her testimony.

The Landlord said there was no discussion of repairs or renovation to the rental unit prior to the start of this tenancy. The Landlord said the rental unit was rented as viewed by the Tenant. The Landlord said the Tenant asked if she could do a few things to fix up the rental unit and the Landlord said he agreed. The Landlord continued to say the toilet was installed on June 27, 2013, the floors were repaired and he paid the Tenant \$150.00 for a stove and fridge that she purchased to replace the existing stove and fridge. The Landlord said they have a fixed term tenancy agreement and there is nothing written about repairs or renovations to the rental unit.

The Landlord said he did not know when the Tenant was moving out of the rental unit, but he thinks the Tenant moved out of the unit on or about August 7, 2013. The Landlord said there may still be some of the Tenant's belongings in the shed at the property. As a result the Landlord said he is requesting unpaid rent for August, 2013 in the amount of \$800.00 and lost rental income for September, 2013 in the amount of \$800.00 as he does not believe he can rent the unit out by September 1, 2013 and the existing tenancy agreement is a fixed term agreement to June, 2014. The Landlord also requested to retain the Tenant's security deposit of \$400.00 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. Consequently, I find the Tenant is responsible for the unpaid rent of \$800.00 for the month of August, 2013 and for lost rental income to the Landlord for the month of September, 2013 in the amount of \$800.00. The Landlord did not know the specific date the Tenant was moving out; therefore the Landlord could not make arrangements to rent the unit to a new tenant for the month of September, 2013.

With regard to the Tenant's application for the return of her July, 2013 rent of \$800.00 and the return of her security deposit in the amount of \$400.00, because the repairs and renovation allegedly discussed between the Tenant and the Landlord were not done, which in the Tenant's testimony made the rental unit uninhabitable; I find there is no written evidence or corroborating evidence that the repairs and renovations were discussed or agreed to between the Tenant and the Landlord. The Tenant said the Landlord agreed to make repairs and renovation and the Landlord said the Tenant rented the unit as viewed. Consequently it is a situation of one party's word against the other party's word. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent's that burden of proof is not met. As a result I dismiss the Tenant claim for the return of rent for July, 2013 in the amount of \$800.00 and the return of the security deposit of \$400.00 as the Tenant has not proven the rental unit was uninhabitable nor has the Tenant proven the Landlord agreed to make repairs or renovations to the rental unit. I dismiss the Tenant's application without leave to reapply.

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 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

Unpaid rent:	\$	800.00
Lost rent income	\$	800.00
Recover filing fee	\$	50.00
Subtotal:		\$1,650.00
Less: Security Deposit	\$	400.00

Subtotal:	\$ 400.00
Balance Owing	\$ 1,250.00

Conclusion

A Monetary Order in the amount of \$1,250.00 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.

The Tenant's application is dismissed without leave to reapply.

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: August 28, 2013

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Residential Tenancy Branch