



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MND, MNDC, FF

### Introduction

This hearing dealt with the landlords' (hereafter referred to in the singular) application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, unpaid rent, and damage to the rental unit, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

The landlord appeared; the tenants did not appear.

The landlord testified that on June 5, 2013, they served tenant CI with their Application for Dispute Resolution and Notice of Hearing by leaving it personally with the tenant at his residence and that they served tenant LW with their Application for Dispute Resolution and Notice of Hearing by registered mail on June 6, 2013 to that same address. The landlord supplied testimony of the tracking number of the registered mail.

I find the tenants were served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation, to retain the tenants' security deposit, and to recover the filing fee?

Background and Evidence

The landlord gave evidence that this 1 year, fixed term tenancy started on September 1, 2012, ended in mid November 2012, monthly rent was \$1500, and that the tenants did not pay a security deposit.

The landlord's monetary claim is as follows:

Unpaid rent, Sept. 2012	\$900
Unpaid rent, Nov. 2012	\$1500
Late fee, \$10/day, 230 days	\$2300
Loss of rent revenue	\$6000
Repairs	\$1200
Pet damage deposit	\$750
Advertising fee	\$250
<b>Total</b>	<b>\$12,700</b>

The landlord's relevant documentary evidence included a CD containing photographs of the state of the rental unit, the written tenancy agreement, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of an advertisement for the rental unit, and a condition inspection report.

The landlord provided the following oral evidence in support of his application-

*Unpaid rent, September*-The landlord submitted that the tenants failed to pay the full amount of rent for September and were deficient in their payment in the amount of \$900.

*Unpaid rent, November*-The landlord stated that the tenants abandoned the rental unit sometime in November and failed to pay the rent for that month.

*Late fees*-The landlord submitted that as the tenants failed to pay rent or were late for at least 230 days during the tenancy until the rental unit was re-rented, they owed the amount of \$10 per day as per the addendum to the tenancy agreement.

*Loss of rent revenue*-The landlord submitted that the tenants breached the terms of the fixed term tenancy, scheduled to end on August 31, 2013, when they abandoned the rental unit sometime in November without any notice to the landlord.

The landlord said that they began advertising the rental unit as soon as the rental unit could be cleaned, and did not secure new tenants until April 1, 2013. Due to the breach of the fixed term, the landlord submitted that the tenants were obligated to pay monthly rent for the months that they lost revenue.

Further the landlord said the rental unit was advertised continually until the rental unit was re-rented, and that the asking price was reduced to encourage new tenants.

*Repairs*-The landlord said that the tenants abandoned the rental unit, leaving it filthy and damaged. The landlord said that the tenants, among many other things, breached the no smoking clause, removed the shower door, and left 750 pounds of rubbish, all of which had to be remediated by the landlord prior to re-renting.

*Pet damage deposit*-The landlord submitted that the tenants failed to inform the landlord that they had acquired a pet and thus failed to pay a pet damage deposit of \$750.

*Advertising fee*-The landlord said that due to the breach of the fixed term tenancy agreement, it was necessary to incur additional costs in advertising the rental unit.

### 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, the landlord 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.

*Unpaid rent, September*-Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

I accept the undisputed evidence of the landlord that the tenants owed rent for September and failed to pay the full amount of rent for the first month of the tenancy. I therefore find that the landlord is entitled to a monetary award of \$900.

*Unpaid rent, November*-As to the unpaid rent for November, I find the tenants remained in the rental unit for at least a portion of that month, having failed to pay rent when due. I therefore find the landlord is entitled to a monetary award of \$1500.

*Late fees*-Under section 7 of the Residential Tenancy Regulation, a landlord may not charge an administration fee of more than \$25 for a late payment of rent. I therefore decline to award the landlord late fees of \$10 per day; however I find that the landlord is entitled to a monetary award of \$50 for a late payment fee for September and November 2012, of \$25 each month.

*Loss of rent revenue, December 2012 through March 2013*-As to the issue of loss of rent revenue, 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.

In the case before me, I find the tenants failed to provide the landlords any notice that they were vacating the rental unit in breach of the Act and thus were responsible to pay monthly rent to the landlord until the end of the fixed term, here August 31, 2013, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

I find the landlord submitted sufficient undisputed evidence that they mitigated their loss by making reasonable efforts to re-rent the rental unit at a reasonably economic rent, and were unable to find a new tenant until April 1, 2013.

I therefore approve the landlords' claim for loss of rent revenue for the months of December 2012-March 2013, in the amount of \$6000.

*Repairs*-After reviewing the landlords' digital photographic evidence, I accept that the tenants damaged the rental unit and left a great amount of garbage, debris, and personal property and should be compensated; the landlord, however, failed to submit proof of the actual costs to repair or remove the garbage.

I find that a reasonable amount to award the landlords in light of their failure to provide specific proof of actual costs to be \$750.

*Pet damage deposit*-A pet damage deposit is collected by the landlord and held in trust for the tenant during the tenancy; likewise the pet damage deposit must be dealt with in accordance with section 38 of the Act at the end of the tenancy.

The failure by the tenants to pay a pet damage deposit when required would be a cause sufficient to end the tenancy.

I am unable to award the landlord a pet damage deposit only to either order that the landlord return the pet damage deposit to the tenants or retain the deposit in partial satisfaction of any monetary award. I therefore decline to award the landlord a monetary award for a pet damage deposit.

*Advertising fee*-I find that the landlord has chosen to incur costs that cannot be assumed by the tenants as the dispute resolution process does not allow for costs incurred to conduct a landlord's business. Therefore, I find that the landlord may not recover advertising fees, as they are costs which are not named by the *Residential Tenancy Act*. I therefore dismiss their claim for \$250 for advertising fees.

I award the landlord recovery of their filing fee of \$100.

Due to the above, I find the landlord is entitled to a total monetary award of \$9300, comprised of unpaid rent for September 2012 in the amount of \$900, unpaid rent for November 2012 in the amount of \$1500, late fees of \$50, loss of rent revenue for

December 2012-March 2013 in the amount of \$6000, repairs for \$750, and the filing fee of \$100.

### Conclusion

The landlord's application for monetary compensation is granted in part and they are awarded monetary compensation in the amount of \$9300.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$9300, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord 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 tenants are advised that costs of such enforcement are recoverable from the tenants.

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* and is being mailed to both the applicant and the respondents.

Dated: September 17, 2013

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Residential Tenancy Branch

