



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MND, MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the unit, compensation for loss of rent revenue, retain all or part of 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.

The tenant confirmed that she had not given the landlord a written forwarding address. The landlord approached the Residential Tenancy Branch (RTB) and was given the tenant's forwarding address that was included with the tenant's application for dispute resolution. The tenant confirmed that she had served the landlord with Notice of her hearing to an address she located on the internet; the landlord did not receive that mail. The landlord confirmed that he had not given the tenant an address at the start of the tenancy and that the written tenancy agreement did not include an address for the landlord.

Therefore, I determined that, despite the landlord's error in not providing an address to the tenant, that the tenant's application could not proceed, as service of the hearing package did not succeed. However, this determination did not prejudice the tenant, as the landlord has applied claiming against the deposit. In accordance with RTB policy, when a landlord applies claiming against a deposit any amount of the deposit remaining is ordered returned to a tenant in accordance with the Act.

In relation to service of the landlord's documents to the tenants; the tenant present at the hearing confirmed that she received the amended application; she had not retrieved the registered mail that had been sent to her by the landlord on October 1, 2013 that contained the original hearing package. By the time the tenant went to retrieve the mail it had been returned to the landlord.

The tenant confirmed that her co-tenant, C J., also received a card for registered mail sent to him on October 1, 2013, but he did not retrieve the mail either. The tenant

confirmed that C.J. did receive the amended application and hearing documents sent by the landlord.

Therefore, I determined that both tenants had been served with Notice of this hearing; in accordance with section 89 and 90 of the Act.

#### Issue(s) to be Decided

Is the landlord entitled to compensation for loss of August 2013 rent revenue in the sum of \$1,250.00?

Is the landlord entitled to compensation in the sum of \$150.00 for repair and cleaning?

May the landlord retain the \$625.00 security deposit in partial satisfaction of the claim?  
Is the landlord entitled to filing fee costs?

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#### Background and Evidence

The tenancy commenced on August 14, 2012. Rent was \$1,250.00 due on the 1<sup>st</sup> day of each month. A security deposit in the sum of \$625.00 was paid. A copy of the written tenancy agreement supplied as evidence indicated this was a 1 year fixed term which was to terminate effective August 14, 2013. The parties agreed that at the end of the tenancy the tenant was to vacate the unit.

Condition inspection reports were not completed.

The parties agreed that they communicated regularly via text message. The landlord confirmed receipt of a July 1, 2013 text message from the tenants, indicating they would vacate effective August 1, 2013. The tenants did vacate and the landlord was given the keys. Rent was paid for the month of July.

The landlord supplied copies of twelve photographs of the unit taken after the tenants vacated. The photos showed the stove top, interior of the dishwasher and dents to several areas of the walls. The landlord's witness provided affirmed testimony that he made repairs to the walls by filling the dents, sanding and painting. The witness said that the interior of the oven and the dishwasher were dirty and required quite a bit of cleaning. The witness confirmed that he was paid \$150.00 for the repairs and cleaning he completed.

The landlord said that once the tenants gave notice ending the tenancy he advertised the unit on a popular web site. A number of people responded and the unit was shown during July. At the end of the July the tenant denied the landlord access to show the unit on short notice; this was confirmed by the tenant. The tenant did not dispute that the

landlord had advertised the unit, but at times he would say he was coming to the unit and would not attend. The tenant said she had denied entry as twenty-four hours notice was not given by the landlord.

The landlord said that it is difficult to rent units in August as there are many vacancies in the area just prior to the start of school in September. The landlord was able to rent the unit effective September 1, 2013.

The tenant said that the dishwasher was not included as a facility in the tenancy agreement, but she did use the dishwasher throughout the tenancy. The tenant said the walls were damaged as the result of normal wear and tear when furniture was being moved. The tenant stated she thought she had finished cleaning the oven.

### 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.

Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean and free of damage, outside of normal wear and tear. I have considered the testimony of each party and the landlord's witness and find, on the balance of probabilities that the tenant did not leave the unit reasonably clean.

The tenant's suggestion that the dishwasher was not mentioned in the tenancy agreement does not relieve the tenant from leaving the machine clean at the end of the tenancy. The tenant confirmed she used the dishwasher and the photographs supplied as evidence clearly showed the unit needed cleaning.

The tenant confirmed that some damage occurred to the walls. I explained during the hearing that wear and tear is considered for such items as carpets that are aged, or appliances that are old and require replacement. Damage to walls caused by the tenant moving furniture, while surely not intentional, is due to negligence and not wear and tear.

Therefore, I find, based on the photographic evidence and, in particular the witness testimony, which I found consistent and convincing, that the landlord did spend \$150.00 for cleaning and repairs and that the landlord is entitled to compensation in that amount.

Section 45(3) of the Act provides the method by which a tenant may end a fixed term tenancy:

*(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.*

When the tenant ended the fixed-term tenancy prior to the end date of the term, August 14, 2013, the tenant breached section 45 of the Act. A tenant cannot give notice ending a fixed term unless the standard of section 45(3) of the Act is met. There was no evidence before me that this occurred.

There was no dispute that the unit was advertised by the landlord; it was placed on a popular internet site and did bring forward some interested parties. While the landlord did not give proper notice of entry at the end of July, the tenant might have considered her responsibility to attempt to minimize the loss of rent revenue by accommodating the landlord. There was no evidence before me that the tenant attempted to assist the landlord in locating a new occupant for August 1, 2103, which could also have avoided a loss of rent revenue.

Therefore, I find, on the balance of probabilities, that the landlord did make efforts to locate a new occupant and that he is entitled to loss of rent revenue in the sum of \$625.00, to the end of the fixed term, August 14, 2013. The balance of the claim for loss of rent revenue is dismissed as the tenancy was to end on August 14, 2013, with the tenants vacating.

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

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$625.00 in partial satisfaction of the monetary claim. There was no dispute that a written forwarding address had not been supplied by the tenants.

I find that the landlord has established a monetary claim, in the amount of \$825.00, which is comprised of \$150.00 for cleaning and repairs; \$625.00 for loss of August 2013 rent revenue and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of \$200.00. In the event that the tenants do not comply with this Order, it may be served

on the tenants, 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 in the sum of \$150.00 for cleaning and repairs.

The landlord is entitled to compensation in the sum of \$625.00 for loss of August 2013 rent revenue.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

The balance of the claim is dismissed.

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: November 07, 2013

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Residential Tenancy Branch

