



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 11, 2013, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord testified that she personally served the Tenant with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing on October 11, 2013, in the presence of a witness. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding on in accordance with section 89 of the Act. Therefore, I proceeded in the Tenant's absence.

### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord pointed to her evidence which included a document signed by the Tenant on January 1, 2014, which indicates the Landlord attended the Tenant's new residence and handed her the package containing the Landlord's evidence. The Tenant's friend took the document and evidence from the Tenant and handed it back to the Landlord. As the Landlord and her spouse were leaving, the Tenant's son came after them yelling and swearing.

The Landlord submitted evidence that the Tenant entered into a fixed term tenancy agreement that began on June 1, 2013 and was set to switch to a month to month tenancy after May 31, 2014. Rent was payable on the first of each month in the amount of \$1,850.00 and on May 1, 2013 the Tenant paid \$925.00 as the security deposit. The tenancy ended as of September 30, 2013, after the Landlord was granted an Order of

Possession and a Monetary Order on September 23, 2013, through the Direct Request Process.

The Landlord testified that the Tenant vacated the property by the end of September 2013, leaving the unit unclean, damaged, and scattered with debris and old possessions. The Tenant said she would return to clean up her possession but never came back. The Landlord was left to clean the unit and was not able to re-rent the unit until November 1, 2013.

The Landlord pointed to her evidence which included invoices for costs incurred and 50 photos of the rental property which were taken after the Tenant vacated the property. The Landlord argued that these photos show the condition the property was left in. As outlined in the Landlord's evidence she is seeking a total compensation of **\$4,520.39** as follows:

- (1) \$250.00 for August rent plus \$1,850.00 for October 2013 rent or loss of rent
- (2) Municipal electricity bills up to September 30, 2013 totalling \$526.10 (\$161.86 + \$209.36 + \$154.88)
- (3) Registered mail fees of \$10.33
- (4) Carpet cleaning costs of \$86.89 (\$46.11 + \$40.78)
- (5) Labour costs to repair and clean the unit and to dispose of debris of \$1,315.00 (\$400.00 + \$350.00 + \$120.00 + \$245.00 + \$100.00 + \$100.00)
- (6) Disposal fees incurred to discard the debris and possessions \$414.87 (\$27.00 + \$387.87)
- (7) Costs to repair the French door \$67.20.

### Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenants who did not appear, despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their documentary evidence.

Section 88 of the Act provides methods of service for evidence, which includes personal service. Common law stipulates that a person cannot refuse service. Therefore, in this case, I find the Tenant is sufficiently served with the Landlord's evidence, despite the Tenant's friend handing it back to the Landlord after it was personally served upon the Tenant.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

On September 23, 2013, the Landlord was issued a Monetary Order of unpaid rent up to September 30, 2013. Therefore I find I cannot consider her claim for unpaid rent which occurred prior to September 30, 2013. Accordingly, I dismiss the Landlord's claim for unpaid rent for August 2013 of \$250.00, without leave to reapply.

In regards to the claim for registered mail fees for bringing this application forward, I find that the Landlord has chosen to incur these costs which cannot be assumed by the Tenant. I make this finding in part because the dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Costs incurred due to a service method choice are not a breach of the Act. Therefore, I find that the Landlord may not claim mail costs, as they are costs which are not denominated, or named, by the *Residential Tenancy Act* and the claim for registered mail of \$10.33 are dismissed, without leave to reapply.

As per the foregoing I find the Landlord has met the burden of proof to claim the remaining items, as listed above, and I award them losses of **\$4,260.06** (\$4,520.39 - \$250.00 - \$10.33).

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Losses up to October 2013	\$4,260.06
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$4,310.06</b>

<b>LESS:</b> Security Deposit \$925.00 + Interest 0.00	<u>-925.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$3,385.06</u></b>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$3,385.06**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: January 10, 2014

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Residential Tenancy Branch

