



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNDC, MND, MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage to the rental unit; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on November 16, 2013 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant at the forwarding address provided by the Tenant, via registered mail. The Agent for the Landlord cited a tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

On January 30, 2014 the Landlord submitted one additional document to the Residential Tenancy Branch. The Agent for the Landlord stated that on January 30, 2014 this document was also mailed to the Tenant. In the absence of evidence to the contrary, I find that this document has been served in accordance with section 88 of the *Act* and it was accepted as evidence for these proceedings.

### Preliminary Matter

During the hearing the Agent for the Landlord applied to increase the amount of the claim for cleaning the carpet from \$83.95 to \$152.95.

Rule 2.5 of the Residential Tenancy Branch Rules of Procedure stipulates that an Application for Dispute Resolution may be amended prior to the start of the hearing by serving an amended Application for Dispute Resolution to the other party. As the Landlord did not serve an amended Application for Dispute Resolution to the Tenant, I find that the Landlord is not entitled to amend any portion of the Application for Dispute Resolution pursuant to rule 2.5.

I find that it would be prejudicial to the Tenant to permit the Landlord to amend the amount of the monetary claim at the hearing. In reaching this conclusion I was heavily influenced by the fact that the Landlord did not previously inform the Tenant of the Landlord's intent to increase the amount of the claim and I find it entirely possible that the Tenant did not attend this hearing simply because the Tenant was not disputing the amount of the Landlord's claims. I therefore decline the request to increase the amount of the monetary claim.

I note that on January 30, 2014 the Landlord provided the Tenant with a receipt to show that the Landlord paid \$152.25 for cleaning the carpet, at which time the Landlord could have informed the Tenant of the Landlord's intent to seek greater compensation.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and for unpaid rent /lost revenue; and is the Landlord entitled to retain all or part of the security deposit paid by the Tenant?

#### Background and Evidence

The Agent for the Landlord stated that this tenancy began on August 01, 2012; that the Tenant agreed to pay monthly rent of \$815.00, which included parking, by the first day of each month; and that the Tenant paid a security deposit of \$392.50. The Landlord submitted a copy of the tenancy agreement which corroborates this testimony.

The Agent for the Landlord stated that a condition inspection report was completed at the beginning and the end of this tenancy, copies of which were submitted in evidence. On the condition inspection report completed at the end of the tenancy the Tenant indicated that he does not agree this report fairly represents the condition of the rental unit at the end of the tenancy.

The Agent for the Landlord stated that on October 07, 2013 the Tenant gave the Landlord written notice of his intent to vacate the rental unit on October 31, 2013, and that the Tenant did vacate the unit on October 31, 2013. The Agent for the Landlord stated that the rental unit was advertised on several popular websites and that the unit was re-rented for November 15, 2013, for \$745.00 per month.

The Landlord is seeking compensation, in the amount of \$373.28, for the lost revenue experienced between November 01, 2013 and November 14, 2013.

The Landlord has claimed compensation, in the amount of \$83.95, for cleaning the carpet in the rental unit. The Agent for the Landlord stated that the carpet was not cleaned at the end of the tenancy. This is consistent with the information on the condition inspection report which was completed at the end of the tenancy. The

Landlord submitted a copy of a receipt to show that the Landlord paid \$152.25 to clean the carpet.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; proving that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenant failed to comply with section 45 of the *Act* when he failed to provide the Landlord with written notice of his intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on October 31, 2013 in compliance with section 45 of the *Act*, the Tenant would have had to provide written notice to the Landlord on, or before, September 30, 2013. As the undisputed evidence shows that the Tenant did not give written notice to the Landlord until October 07, 2013, I find, pursuant to section 53 of the *Act*, that the earliest effective date of this notice was November 30, 2013.

I find that the late notice prevented the Landlord from entering into a tenancy agreement with new tenants until the Tenant vacated the rental or until the effective date of the Tenant's written notice to vacate. As the Tenant did not vacate the rental unit until October 31, 2013, I find that the Tenant's actions significantly interfered with the Landlord's ability to rent the unit to a new occupant for November 01, 2013. I find that the Landlord acted diligently and responsibly when the Landlord advertised the rental unit and that the Landlord was able to find a new tenant for November 15, 2013.

I find that the Tenant is obligated to compensate the Landlord for the lost revenue the Landlord experienced between November 01, 2013 and November 15, 2013 (14 days), as the Landlord would not have lost that revenue if the Tenant had remained in the rental unit until the end of November. I find that the daily revenue for this tenancy was \$27.17 (\$815.00 divided by 30 days) and that the Landlord lost revenue of \$380.38 for the 14 day period. As the Landlord has proven that the Landlord lost revenue in an amount that is greater than the amount of the Landlord's claim, I find that the Landlord is entitled to the full amount of this claim, which is \$373.28.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the carpet in clean condition at the end of the tenancy. On the basis of the receipt submitted in evidence, I find that the Landlord paid more than \$83.95 to clean the carpet and I therefore find that the Landlord is entitled to the full amount of the claim of \$83.95.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$507.23, which is comprised of \$373.28 in lost revenue, \$83.95 for cleaning the carpet, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of \$392.50, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$114.73. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: February 11, 2014

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Residential Tenancy Branch

