



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LOCKE PROPERTY MANAGEMENT LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and loss of rental income, for compensation for damage to the unit, site or property and to retain the Tenants' security deposit.

The Landlord Agent said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on November 15, 2013. Based on the evidence of the Landlord's Agent, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

### Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and/or lost rental income and if so how much?
3. Is there damage or loss and if so how much?
4. Is the Landlord entitled to compensation for the damage or loss and if so how much?
5. Is the Landlord entitled to keep the Tenants' security deposit?

### Background and Evidence

This tenancy started on April 1, 2013 as a fixed term tenancy with an expiry date of March 31, 2014. Rent was \$1,600.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$800.00 at the start of the tenancy. The Landlord said the Tenants moved out of the rental unit on or about October 19, 2013. The Landlord said no move in condition inspection was completed, but a move out condition inspection report was completed and signed by both the Landlord's Agent and the Tenant on November 1, 2013. The Landlord said that the Tenant agreed to \$200.00 in damages to a wall in the unit and signed the report as agreeing it fairly

represented the condition of the unit at the end of the tenancy. The Tenant said the move out report was completed and he did sign it as agreeing, but the Tenant said he was new to renting and he now thinks signing the move out condition inspection report was a mistake as he believes the rental unit was left in a clean state. The Tenant said he is not disputing the \$200.00 for wall damage.

The Landlord continued to say that the Tenants put a stop payment on the July, 2013 rent cheque prior to him depositing it because he was away during July, 2014. The Landlord said the Tenant has unpaid rent for July, 2013 in the amount of \$1,600.00. The Tenants at first said this was incorrect, but then checked the package of cheques the Landlord returned to them which they had requested and the July, 2013 rent payment cheque was in the package. The Tenants said they agree the July, 2013 rent was not paid and they are responsible for it.

Further the Landlord and the Landlord's Agent said that because this is a fixed term tenancy until March 31, 2014 the Tenants are responsible for the rent until March 31, 2014 or until the unit is rent to a new occupant. The Landlord's Agent said he advertised starting in early November, 2013 on 3 web sites and through his company. As well the Landlord's Agent said he showed the unit to approximately 8 different parties starting in December, 2013 and ending in February, 2014. The last party to look at the unit in February, 2014 agreed to rent it starting April 1, 2014. As a result the Landlord's Agent said the Landlord has applied for lost rental income from November, 2013 to March, 2014 in the amount of \$9,600.00.

The Tenant said in response to the Landlord's claim for lost rental income that they agreed they owed rent for November, 2013 as they left the tenancy early, but they do not think they are responsible for any additional lost rental income as they believe they had an agreement with the Landlord to end the tenancy November 1, 2013. The Tenant said they submitted an information notice from the Landlord dated September 14, 2013, which says the Landlord wanted to inspect the rental unit and questioned the Tenant when they were vacating and if the Landlord should advertise the unit for rent starting November 1, 2013. The Tenant said they took this as an offer to end the tenancy and they accepted it in a letter back to the Landlord dated only as September, 2013.

The Landlord said this was not an offer to end tenancy it was just to get information so that they could try to get a new tenant as soon as possible. The Landlord and the Landlord's Agent continued to say that at the move out condition inspection on November 1, 2013 they told the Tenants they were responsible for the rent until the end date of March 31, 2014 in the tenancy agreement. The Tenant agreed the Landlord told him this and they did understand that they were responsible for the rent until the end of the tenancy agreement. The Tenant continued to say the reason they wanted out of the tenancy agreement was that they were not receiving the quality of rental that they were paying for. The Tenant said the unit was dirty and had some repair issues when they moved in. The Tenant continued to say the Landlord did not attend to the repair issues they told him about them. The Landlord said he had the carpets professionally cleaned just after the Tenants moved in. The Tenant responded that the carpet cleaning did not

remove the stains in the carpets and they felt they were not getting an upscale rental although the Tenants thought they were paying an upscale rental price.

The Landlord continued to say that they are requesting their legal fees of \$434.61 for a collection letter sent to the Tenants, for \$350.00 in damages including \$200.00 for wall damage and \$150.00 for cleaning. The Landlord's Agent also requested a \$50.00 elevator booking fee charged by the strata for when the Tenants moved out of the unit. The Landlord also said there was a previous dispute hearing in which the Tenants were awarded a rent abatement of \$380.00 which the Landlord said has not been paid but should be deducted from his claim. As well the Landlord requested to retain the Tenants security deposit of \$800.00 as partial payment of the unpaid rent.

The Landlord's Agent said the Landlord's total claim is \$9,254.61.

The Tenants said they left the unit in clean condition and submitted 30 photographs to support their claim the rental unit was clean when they left. The Landlord said he spent one day in the unit repairing the wall and cleaning the unit. The Landlord's Agent said the move out condition inspection report shows the unit was not clean and the Tenant signed the report as agreeing to it. The Landlord's Agent and the Landlord said the rental unit was not cleaned when the Tenants move out.

The Tenants said in closing the unit was cleaner when they left the unit than when they moved into the unit. The Tenant said they now understand that they should not have put a stop payment on their cheques when the Landlord would not respond to their requests for issues in the rental unit. The Tenant said they did not know that at the time, but understands it now. The Tenant continued to say they agree the July, 2013 rent is unpaid because of the stop payment order made to the bank. The Tenants continued to say they did not see any advertisements for the unit until December, 2013 and they did bring 3 parties to look at the unit for a sublet, but these parties did not want to rent the unit.

The Landlord said in closing that they did not have an agreement with the Tenants to end the tenancy at the end of October, 2013 and the Tenants understood they were responsible for the rent until the end of the tenancy agreement or when the unit was rented to new tenants. The Landlord said the Tenants did not provide any names to him for potential new tenants.

The Landlord's Agent said in closing that the Tenants knew they were responsible for the rent until the end of the tenancy and the Tenant had signed the move out condition report as agreed and that the Landlord could deduct \$200.00 from their deposit for wall damage. The Landlord's Agent said the report shows the unit was not clean at move out. The Landlord's Agent continued to say he wanted to correct a previous statement that he made in that he believes he started to advertise the unit for rent in late November or early December, 2013 not early November, 2013 as the Landlord was doing work to the unit during November, 2013 to prepare it for new tenants.

### 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.

The Tenant did not have the right under the Act to withhold part or all of the rent for July, 2013. Whether it was a mistake that the July, 2013 rent cheque was cancelled or not the July, 2013 rent is unpaid, therefore I find in favour of the Landlord for the unpaid rent of \$1,600.00 for July, 2013.

Section 45 of the Act says A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is **not earlier than the date specified in the tenancy agreement as the end of the tenancy**, and

(c) 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 addition section 44(c) of the Act says a tenancy may end if the landlord and tenant agree in writing to end the tenancy

Further Section 7 (2) of the Act says (2) a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

It is apparent from the testimony that the Tenants understood that they were responsible for the rent until the end of the tenancy agreement; although they believe they had a written agreement to end the tenancy in November, 2013, because of the Landlord's information note dated September 14, 2013 asking when they were vacating the unit and if the Landlord could start advertising for November 1, 2013. An agreement to end a tenancy must have the end date specified and the clear agreement of all parties that the tenancy is ending as well as the signatures of all the parties. I find that the note from the Landlord and the letter from the Tenants in response to the Landlord's

information note does not constitute a mutual agreement to end a tenancy. Therefore, I find the Tenants ended the tenancy before the fixed term in the tenancy agreement which was March 1, 2014 and consequently I find the Tenants are responsible for lost rental income that the Landlord suffered.

In establishing the amount of lost rental income section 7 (2) indicates a party must do whatever is reasonable to minimize the damage or loss. In this situation it is reasonable for the Landlord to try to find new tenants as soon as possible to reduce the loss for both the Landlord and the Tenants. To minimize lost rental income it is required by the Landlord to advertise the property as soon as possible and to rent the property as soon as possible. From the testimony of the Landlord's Agent he started to advertise the unit in late November or early December, 2013 as the Landlord was doing work in the unit in November, 2013 to prepare the unit for rental. Consequently I find the unit was not available for rent in November, 2014 and since the advertising may have started in late November or December it was unlikely the unit would rent for December, 2013. As well since the Landlord and the Landlord's Agent knew the unit would be vacated by October 31, 2013 by the letter of the Tenants dated September, 2013 the Landlord and his Agent had plenty of time to start advertising the unit prior to late November or early December, 2013. For the reason of not advertising the unit prior to late November or early December, I find the Landlord did not do whatever was possible to minimize his loss. Consequently I find the Landlord has lost rental income, but I am only award the Landlord lost rental income for January, 2014, February, 2014 and March, 2014 as the Landlord did not do whatever was reasonable to minimize his loss for November and December, 2013. I award the Landlord \$4,800.00 in lost rental income.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord has provided receipts for his claim of the elevator fee of \$50.00. I award the Landlord the \$50.00 for the strata fee for the elevator that the Tenants booked on their move out.

With respect to the Landlord's damage claim for \$350.00. The Tenant has agreed to \$200.00 for damage to the wall; therefore I award \$200.00 to the Landlord for this damage claim. As well the Landlord does not have a receipt for the \$150.00 for cleaning as he did the cleaning himself and the Landlord indicated he spent 1 day repairing the wall and cleaning the unit. As the move out condition inspection report is signed and agreed to by the Tenant as showing the unit is not clean I award the Landlord the \$150.00 for his time to cleaning the unit.

In regard to the lawyer's bill of \$434.61 this cost is an item that is outside the tenancy agreement and is therefore not an eligible claim. I dismiss the lawyer's bill of \$434.61 without leave to reapply.

In addition I order the Landlord pursuant to s. 38(4) the Act to keep the Tenants' security deposit in partial payment of the rent arrears and to comply with the previous Hearing decision that awarded a rent abatement of \$380.00 to the Tenants which will also be deducted from the Landlord's claim. The Landlord will receive a monetary order for the balance owing as following:

	Lost rental income:	\$ 4,800.00
	Unpaid rent	\$ 1,600.00
	Damages and Cleaning	\$ 350.00
	Elevator fee	\$ 50.00
	Subtotal:	\$6,800.00
Less:	Security Deposit	\$ 800.00
	Rent Abatement	\$ 380.00
	Subtotal:	\$ 1,180.00
	Balance Owing	\$ 5,620.00

### Conclusion

A Monetary Order in the amount of \$5,620.00 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: March 05, 2014

---

Residential Tenancy Branch

