



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNDC MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 5, 2013, by the Landlord to obtain a Monetary Order for: unpaid rent or utilities; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep all of the security and pet deposits; and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the Act, sent via registered mail on December 5, 2013. Mail receipt numbers were provided in the Landlord's verbal testimony. Based on the submissions of the Landlord I find the Tenant was deemed served notice of this proceeding on December 10, 2013, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I proceeded with the hearing in the absence of the Tenant.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The style of cause reflects two Landlords; however only one Landlord appeared at this proceeding. Therefore, for the remainder of this decision, terms or references importing the singular shall include the plural and vice versa.

### Issue(s) to be Decided

1. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord submitted evidence that the parties executed a written tenancy agreement for a month to month tenancy that commenced on August 1, 2012. The Tenant was required to pay rent of \$1,600.00 on the first of each month and on July 21, 2012, the Tenant paid \$800.00 as the security deposit plus she paid \$800.00 as the pet deposit.

The Landlord testified that on November 17, 2013, she received an e-mail from the Tenant indicating that she was ending her tenancy effective November 30, 2013. The Tenant returned the keys to the Landlord's agent on the morning of December 1, 2013; however, at that time the Tenant had not cleaned the rental unit and still had possessions outside on the property. The Landlord stated that the Tenant was given an opportunity to clean the unit and they scheduled the move out inspection for December 4, 2013.

The Landlord pointed to her evidence which included a copy of the move-out inspection report that was completed December 4, 2013, with the Tenant. She provided several photographs taken December 4, 2013, in her evidence, which display the condition the rental unit was left by the Tenant.

The Landlord argued that the unit was left dirty and with some damage. The Tenant never informed the Landlord of problems with the washing machine or kitchen faucet which were left requiring repairs; and she did not have permission from the Landlord to have a cat. One of the bedroom carpets and underlay smelled like it was soaked with cat urine. In the Landlord's written submissions she pointed out that the Tenant was only allowed to have two dogs and there never was any mention or approval for her to have a cat.

The Landlord was able to re-rent the unit right away; however, the new tenants could not occupy the unit until December 8, 2013, which is when the cleaning had been completed. She stated that she had to give the new tenants a rent reduction of \$400.00 as a result of this delay.

The Landlord submitted an amended list of her claim totalling **\$2,217.44** which included the following:

- \$400.00 for loss of rent from December 1 – 7, 2013
- \$735.00 for the cost to replace the bedroom carpet with a carpet and underlay of equal quality
- \$400.00 for repairs, cleaning, and debris removal
- \$ 84.00 for repairs to the washing machine where they found a balloon stuck in the motor, as per the invoice
- \$290.68 for supplies to repair the door and kitchen faucet which was leaking from the movable arm hose, as per the invoice provided in evidence
- \$307.76 for the unpaid water bill as provided in evidence.

In closing the Landlord stated that she received an e-mail from the Tenant on December 3, 2013, which provided the Tenant's forwarding address and indicated that she wanted her deposits returned.

### Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenant 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 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, 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 this case the Tenant was required to provide written notice to the Landlord no later than October 31, 2013, if she wished to end her tenancy November 30, 2013. The Tenant did not provide her Notice until November 17, 2013. The Tenant remained in possession of the unit until December 1, 2013, and left it with debris, requiring cleaning, and with some damage, which caused a delay on when the next tenants could occupy the unit. The Landlord suffered a loss of rent of \$400.00 from December 1 – 7, 2013, due to the Tenant's breach; therefore, I find the Landlord has proven entitlement to claim for that loss.

The tenancy agreement provides that the Tenant is required to pay utilities. The evidence supports that the water bill had not been paid by the Tenant; accordingly, I find the Landlord is entitled to recover the outstanding utilities.

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 45(1), 32(3) and 37(2) of the Act, ending the tenancy in breach of the Act and leaving the rental unit unclean and with some damage, which caused the Landlord to suffer a loss.

As per the foregoing I find the Landlords have met the burden of proof and I award them the monetary claim, as detailed above, in the amount of **\$2,217.44**.

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

**Monetary Order** – I find that the Landlords are 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:

Monetary Claim	\$2,217.44
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$2,267.44
<b>LESS:</b> Pet Deposit \$800.00 + Interest 0.00	-800.00
<b>LESS:</b> Security Deposit \$800.00 + Interest 0.00	<u>-800.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 667.44</u></b>

#### Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$667.44**. 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: March 31, 2014

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Residential Tenancy Branch

