



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Success Realty & Insurance Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNR, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for alleged unpaid rent, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The landlords and the tenant attended the teleconference hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issue about the other's documentary evidence or the application.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and recovery of the filing fee?

### Background and Evidence

The written tenancy agreement provided by the landlord shows that this 1 year, fixed term tenancy began on January 1, 2102, provided that the tenancy was to continue on a

month to month basis after December 31, 2012, monthly rent was \$895, and the tenant paid a security deposit of \$447.50.

The undisputed evidence shows that the tenancy ended on September 30, 2013, pursuant to a notice from the tenant.

Although the landlord listed a monetary claim in their application in the amount of \$2305.50, without providing a detailed calculation breaking down this claim as required, the landlord's documentary evidence revised their monetary claim to \$1790, comprised of two months' rent.

In support of their application, the landlord submitted that they were entitled to loss of rent revenue for October and November 2013, due to the insufficient notice provided by the tenant that he was vacating the rental unit; more specifically, the landlord contended that they received notice on September 27, 2013, that the tenant was vacating the rental unit on September 30, 2013, and therefore lost rent revenue for October.

Although the parties were on a month to month tenancy after December 31, 2012, the landlord still claimed for loss of rent revenue for November 2013, as well, because, according to the landlord, the rental unit was not rented for that month.

The landlord confirmed receiving a complaint from the tenant about a water leak, but that the leak was attended to immediately by the building manager.

In response to my question, about advertising the rental unit, the landlord did not have a specific date as to when the rental unit was placed back on the rental market and he further replied that their procedure is for the first week after a vacancy, with advertising on Craigslist and with a sign.

The landlord could not answer as to when there were showings of the rental unit, as the building manager handled those matters.

The landlord's additional relevant documentary evidence included the tenant's notice that he was terminating the tenancy and a letter from the building manager to the landlord, stating that the day after the flood in the rental unit on September 22, 2013, he lifted the carpet and removed the underlay in the bedroom, suctioning the water with a wet vacuum cleaner.

The building manager's letter also went onto state that he shampooed the carpet and when the tenant moved out on September 29, 2013, the laminate floor was repaired.

In response, the tenant submitted he had no choice but to move from the rental unit on short notice as the landlord failed to clean and remediate the rental unit after a flood in the rental unit on September 22, 2013. The tenant described the flood as water pouring out of the ceiling into the light fixtures and that he had to call the building manager twice before he responded.

The tenant submitted that the building manager only removed a small piece of carpet and that due to the flood, the rental unit was unliveable due to the smell and mold now occurring.

The tenant submitted that no one representing the landlord attended the rental unit for two days, and that on September 26, the building manager shampooed the carpet, making a wet carpet even wetter. The tenant submitted that on September 27, he was informed by the building manager that they were finished with remediating the rental unit; however, according to the tenant, he was not able to live in the rental unit for the last week of the tenancy due to the smell.

The tenant's relevant documentary evidence included photographs of the rental unit, including the buckled laminate flooring, the water line along the ceiling where the water entered the rental unit, mold forming in the bedroom, and rotting and moldy wood under the carpet in the bedroom.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 45 (3) of the Residential Tenancy Act authorizes a tenant to end a tenancy by giving proper notice if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure.

In the case before me, there is no evidence that the tenant provided written notice to the landlord to correct the damage caused by the flood prior to the tenant giving his notice to vacate. I therefore find that the tenant provided insufficient notice required by section 45 of the Act that he was vacating the rental unit.

I next considered the landlord's efforts in mitigating their loss, for October.

In this instance, I find the landlord failed to submit sufficient evidence that they took reasonable steps to mitigate their loss of unpaid rent. I reached this conclusion due to the landlord's failure to submit any evidence of their attempts to advertise the rental unit, and I was therefore unable to examine the start date, form, content and frequency of the advertisements.

I was particularly influenced by the landlord's confirmation that the rental unit was not re-rented until March 2014, which suggests that reasonable efforts were not made, or that the tenant's assertions that the rental unit was unliveable were confirmed.

I was also influenced by the landlord's failure to have the building manager attend the hearing, as it would be only the building manager who could provide first hand information in response to the tenant's assertions.

Curiously, the landlord claimed for loss of rent revenue for November 2013, even though they received the tenant's notice to vacate in September. As the tenancy was no longer a fixed term tenancy and the tenant provided notice in September of his intent to vacate, I advise the landlord that the tenant is not responsible for monthly rent the following month when the notice under section 45(1) would take effect.

As I have found that the landlord failed to provide evidence that they advertised the rental unit and therefore have not met step 4 of their burden of proof, and that the tenant is not responsible for the landlord's alleged loss of rent revenue the month following the end of the month to month tenancy, I dismiss the landlord's application for loss of rent revenue for October and November 2013, without leave to reapply.

I likewise decline to award the landlord recovery of their filing fee.

As I have dismissed the landlord's application for monetary compensation, including their claim against the tenant's security deposit, I direct the landlord to return the tenant's security deposit immediately.

### Conclusion

The landlord's application is dismissed.

I direct the landlord to return the tenant's security deposit of \$447.50, and I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$447.50, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order may be served upon the landlord, and if necessary, filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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: April 19, 2014

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Residential Tenancy Branch

