



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MND, MNDC, 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 money owed or compensation for damage or loss and damage to the rental unit, for authority to retain the tenant's security deposit and for recovery of the filing fee.

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

Neither party raised any issue regarding service of the application or the documentary evidence.

Thereafter both 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 authority to retain the tenants' security deposit, further monetary compensation, and to recover the filing fee?

### Background and Evidence

The parties agreed that the tenancy began on April 1, 2012, monthly rent was \$3600, and the tenants paid a security deposit of \$1800.

The landlord submitted that the tenants vacated the rental unit on December 15, 2013, and the tenant submitted that they vacated the rental unit on December 6, 2013.

The landlord's monetary claim is \$2100, comprised of unpaid rent of \$1800 and the value of a lamp for \$300.

The landlord's relevant documentary evidence included the written tenancy agreement, a photo of a light fixture, and email communication between the parties, which discussed the tenants' moving date, an extension of time and showings for the rental unit to prospective tenants.

In support of her application, the landlord submitted that the tenants had informed her that they would be vacating the rental unit by November 30, 2013, and instead of vacating, the tenants asked for an extension of time to move out on December 15, 2013 instead.

The landlord submitted that she was agreeable to the tenants staying until December 15, with the understanding that they would pay rent for that time period. When the tenants failed to pay the half month's rent for December 1-15, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, according to the landlord.

In response, the tenant disagreed that they owed the amount of \$1800 in unpaid rent. The tenant further submitted that they provided the required notice that they were vacating by November 30, 2013, and shortly thereafter, a realtor assisting the landlord contacted them about arranging for the next tenancy. This realtor advised the tenants that the landlord was advertised as being available for December 15, 2013, and the landlord confirmed this date.

At this time, according to the tenant, they asked the landlord if they could remain in the rental unit until December 15, 2013, since the landlord was not seeking a new tenant prior to that time, subject to being able to rebook the movers, which had been set for November 29.

The tenant further submitted that they never received a clear answer as to whether the landlord would allow them to stay until December 15, and use their security deposit for that portion of the month, so they decided to vacate ahead of December 15. The tenant submitted that they vacated on December 6, as shown by the receipt for the movers, and that the cleaning company performed a final clean on December 8, which was when the tenant learned of the 10 Day Notice from the landlord.

The tenant submitted that he would agree that he owes the landlord for over holding in the rental unit for 8 days, and that as the landlord did not attempt to re-rent the rental unit for the time period of December 1-15, he is not responsible for the entire sum.

As to the landlord's claim for the light fixture, the tenant submitted he had not ever seen the light shown in the landlord's evidence and that he removed the light fixture that was in the rental unit when he took possession, and replaced it with one of his own. Upon vacating, the tenant removed his light fixture and replaced it with the original light.

The tenant submitted that he met the tenants prior to his tenancy, in March 2014, and they informed him the light fixture in the landlord's photo was their light. The tenant said this was confirmed by his email evidence from those tenants, who identified the light and furniture in the landlord's photo was their personal property.

The tenants' additional relevant documentary evidence included the moving receipt, email communication between the parties, and a Craigslist advertisement showing the rental unit for occupancy on December 15.

### 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.

As to the landlord's claim for unpaid rent for the time period of December 1-15, I do not find conclusive proof that the parties ever mutually agreed that the tenancy would be extended to December 15, from the original intended end date of November 30. I did view a series of emails between the parties, but no firm agreement was reached from my review of the evidence.

I therefore find that the tenancy was not extended to December 15, and that the tenancy and the tenants' monthly rent obligation ended on November 30, 2014 as per the tenants' original notice to vacate.

Under section 57 of the Act, a landlord may claim compensation from a tenant who over holds in the rental unit after a tenancy has ended. In the case before me, I find the tenancy ended on November 30, 2013, and that the tenants had not vacated and performed a final cleaning until December 8, 2013. I therefore find the landlord is entitled to compensation from the tenants who over held in the rental unit beyond November 30, 2013, in the amount of \$946.88 ( $\$3600 \times 12 \text{ months} = \$43,200$  yearly rate  $\div 365$  days per year = \$118.36 daily rate  $\times 8$  days in December = \$946.88).

As to the landlord's claim for compensation for the light fixture, I find the landlord submitted insufficient evidence that she owned the light fixture as I find the tenants submitted sufficient evidence that the light belonged to the previous tenants.

I therefore dismiss the landlord's claim for \$300.

I allow the landlord's request for recovery of the filing fee of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$996.88, comprised of compensation for the tenants over holding in the rental unit, in the amount of \$946.88 and the filing fee of \$50.

### Conclusion

The landlord's application for monetary compensation is partially successful as I have granted her a monetary award of \$996.88.

At the landlord's request, I direct her to retain \$996.88 from the tenants' security deposit of \$1800 in full satisfaction of their monetary award of that amount. I direct the landlord to return the balance of the tenants' security deposit of \$803.12, and I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$803.12, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay after being served the order, the monetary order may be 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 16, 2014

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Residential Tenancy Branch

