



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MND, MNDC, MNR, MNSD

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the tenants on December 27, 2014. I find that the Amended Application for Dispute Resolution/Notice of Hearing was sufficiently served on the tenants by mailing, by registered mail on February 2, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

On June 12, 2014 the parties entered into a 3 year fixed term written tenancy agreement that provided that the tenancy would start on July 1, 2014 and end on June 30, 2017. The tenancy agreement provided that the tenant(s) would pay rent of \$3600 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$1800 and a pet damage deposit of \$1800 at the start of the tenancy.

In early December the tenants texted the landlord advising they could no longer afford the rent and that they would be leaving at the end of December. The landlord was out of the country at the time. The landlord returned on December 20, 2014. She re-rented the rental unit to new tenants on January 3, 2015 for a reduced rent of \$3150 per month commencing February 1, 2015. The landlord testified it was a very difficult time to find new tenants and she was compelled to rent to the new tenants for the reduced rent as she did not wish the rental unit to remain without tenants.

### Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant 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 and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Much of the evidence presented by the tenant involved the poor condition of the rental unit when the tenants took possession and the problems they experienced with the

rental unit. While this evidence may be relevant should the tenants bring a claim against the landlord it is not relevant to the claims before me in this arbitration.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord is entitled to \$3600 for non payment of rent for December. The tenants failed to pay the rent for that month and remained in the rental unit until the end of December.
- b. I determine the landlord is entitled to \$3600 for loss of rent for January 2015. Where a tenant has entered into fixed term tenancy the tenant is obliged to pay the rent for the entire unexpired time of the fixed term subject to the obligation of the landlord to act reasonably to lessen the loss. In my view the landlord cannot be faulted for not finding a new tenant to move in on January 1, 2015 as the landlord advertised in December as soon as she received notice the tenants were vacating.
- c. The tenants agreed to pay \$3600 per month. The landlord found new tenants for the reduced rent of \$3150 per month. The landlord claims the sum of \$13,050 for the loss of rent for the remaining 29 months of the fixed term tenancy at a sum of \$450 per month. This is a difficult claim to assess. Section 7(2) of the Residential Tenancy Act provides a party must do whatever is reasonable to minimize the damage or loss.

**Liability for not complying with this Act or a tenancy agreement**

**7** (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.

The landlord returned to Canada on December 20, 2014. She entered to a contract with the new tenants on January 3, 2015. In the circumstances

I determined the landlord acted prematurely in renting to the new tenants at the reduced rent. However, I determined that the landlord is entitled to \$3600 for this claim as it would have been reasonable for the landlord to wait an additional month to see whether a new tenant could be found for the \$3600 rent.

- d. The landlord claimed the sum of \$500 for the cost of painting. The tenant acknowledged causing some of the damage that necessitated the painting but disputed other damage. I determined the landlord is entitled to \$350 of this claim with the rest being a result of reasonable wear and tear.
- e. I determined the landlord is entitled to \$152.25 for the cost of carpet cleaning.
- f. The landlord claimed the sum of \$334.21 for the replacement of a piece of carpet and \$375 for installation for a total of \$709.21. The tenant acknowledged that her pet caused damage to the carpet. However, the tenant is obliged to pay the depreciated value of the carpet. Policy Guideline #40 provides that the useful life of a interior carpet is 10 years. I have considered the landlord's testimony that the carpet was in good condition and was of good quality. I determined the reasonable life of this carpet would be 12 years. Thus the landlord has established a claim against the tenant in the sum of half of what was claimed or the sum of \$354.60.
- g. I determined the landlord is entitled to \$300 for the cost of cleaning the rental unit (reduced from what was claimed as I determined part of the problem was caused by the mold in the rental unit.
- h. I determined the landlord is entitled to the sum of \$325 for the cost of garbage removal.
- i. The landlord claimed the sum of \$349.57 for the cost of purchasing a new microwave. The evidence presented indicates the microwave was 6 years old. However, the landlord failed to prove the tenant's negligence or misconduct caused this damage and as a result this claim is dismissed.

- j. I determined the landlord is entitled to \$73.11 and \$47.58 for a total of \$120.69 for cost of replacing lights bulbs.
- k. The landlord claimed the sum of \$1055.99 for the cost of utilities from the period October 29, 2014 to January 31, 2015. The tenant disputed this claim testifying some payments were made but the landlord failed to provide receipts. The tenants failed to provide an accounting of what was allegedly paid. I accept the testimony of the landlord on this point. The Supreme Court of British Columbia has held that a tenant is not responsible to pay utilities even where there is a fixed term tenancy after they have vacated. I determined the landlord is entitled to the following:
- B.C. Hydro bill for period Oct. 29 to Dec. 29 - \$337.52
  - Fortis Gas bill for the period Oct. 28 to Nov. 27 - \$69.33
  - Fortis Gas bill for the period Nov. 27 to Dec. 24 - \$126.63
  - Fortis Gas for period Dec. 24 to Dec. 31 - \$25.20 (7 days divided by 34 days multiplied by \$122.43 = \$25.20)
  - Water bill for period October 7 to December 4 – \$83.94
  - Water bill for the period December 4 to December 31 - \$40.

I dismissed the claim of the landlord in the sum of \$179.65 for the Hydro bill for the period Dec. 29 to Jan. 31, the Fortis gas bill in the sum of \$14.00 for the period January 27 to January 31 and the water bill for January as the tenants were not in the rental unit during that time. In summary I determined the landlord has established a claim against the tenants in the sum of \$682.62 for the cost of utilities.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$13,085.16 plus the \$100 filing fee for a total of \$13,185.16.

#### Security Deposit

I determined the security deposit and pet damage deposit totals the sum of \$3600. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain

this sum thus reducing the amount outstanding under this monetary order to the sum of \$9485.16.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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 04, 2015

---

Residential Tenancy Branch

