



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pinnacle International Realty Group II  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

**MNDC, MNR, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for loss of rent revenue, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on August 16, 2014 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the female tenant by registered mail to the address given at the end of the tenancy. A copy of the Canada Post tracking information was supplied as evidence.

The mail was accepted by a manager at the building where the tenants moved; nearby to the unit they had vacated. The landlord spoke to that manager and was told that the unit number on her mail was incorrect; she had recorded unit 004 when in fact the tenants were living in unit 604.

On August 25, 2014 the landlord re-mailed the hearing documents and on September 4, 2014 the mail was accepted. The tracking information showed that a different manager B.D. signed accepting the mail. The landlord said that this appeared to be the method for delivery of registered mail and that it would be given to the tenants.

On August 14, 2014 the male tenant was served with the hearing documents and evidence. The landlord saw him on the street outside of the building and she went out with the documents and evidence and handed them to the tenant. Service occurred at 12:05 p.m.

I find, pursuant to section 71(2) of the Act, that the female tenant has been sufficiently served with the documents; mailed to the correct address obtained by the landlord.

I find, pursuant to section 89 and 90 of the Act that the male tenant was served on the day the documents were personally given to the tenant.

Neither tenant attended the hearing.

### Preliminary Matters

The details of the dispute section of the application set out the total claim. The sum indicated in the application reflected a claim took into account the security deposit deduction. The claim was detailed on the move-out condition inspection report supplied as evidence with the application.

### Issue(s) to be Decided

Is the landlord entitled to compensation the sum of \$1,100.00 for loss of August 2014 rent?

Is the landlord entitled to compensation in the sum of \$130.00 for carpet cleaning and \$115.00 for window covering cleaning?

May the landlord retain the security deposit?

### Background and Evidence

The tenancy commenced on January 1, 2014 for a 1 year fixed term. Rent was \$1,100.00 per month, due on the 1<sup>st</sup> day of each month. A security deposit in the sum of \$550.00 was paid.

Clause 31 of the tenancy agreement required the tenants to have the carpet and window coverings professionally cleaned at the end of the tenancy if they were professionally cleaned at the start of the tenancy.

Clause 10 of the tenancy agreement imposed a \$50.00 fee for any NSF cheque.

The landlord did not supply a copy of the tenancy agreement.

A move-in and move-out condition inspection report was completed; a copy was supplied as evidence.

On the last day of July 2014 the tenants gave notice they would vacate on August 31, 2014. The landlord submitted a copy of a letter given to the tenants on July 1, 2014. The letter informed the tenants they were breaching the terms of the tenancy agreement and must pay August 2014 rent. The note informed the tenants that if a new tenant could not be located they could be liable to pay rent until the end of the term.

The landlord immediately advertised the unit on a popular web site and showed it to potential occupants approximately fifteen times during July and into August 2014. The unit was rented effective September 1, 2014.

The landlord waited to see if the August rent cheque would process; if it had they would have continued to seek new tenants, but the tenants would have had possession of the unit to the end of August.

The August rent cheque was returned as NSF.

The landlord arranged a condition inspection for August 7, 2014; the tenants did not attend.

The carpets and window coverings had not been cleaned. The landlord has a staff member who cleans the carpets; the window coverings are professionally cleaned. Verification of the cost; outside of the sums notated on the inspection report, were not supplied.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find, based on the landlord's affirmed testimony and, in the absence of the tenants who were served with Notice of this hearing, that the parties signed a fixed-term tenancy agreement and that the landlord is entitled to compensation in the sum of \$1,100.00 for loss of August 2014 rent revenue. The tenant's breached section 45 of the Act by ending the fixed term tenancy prior to the end of the term. They were warned by way of the July 1, 2014 letter that they could be liable for loss of rent revenue.

Residential Tenancy Branch policy suggests that when a tenant breaches the Act and rent is lost the landlord may be compensated to put the landlord in the same position as if the tenant had not breached the Act. The landlord was able to mitigate any further loss by locating new occupants effective September 1, 2014.

In relation to the claim for carpet and window covering costs; in the absence of the tenants at the hearing, I have accepted the costs claimed as a reasonable and nominal reflection of the cost that would be incurred. The tenants were at liberty to attend the hearing to dispute the claim and they failed to do so. Therefore, the landlord is entitled to compensation in the sum of \$245.00.

Clause 10 of the tenancy agreement; read by the landlord during the hearing, imposes a fee that fails to comply with section 7 of the Residential Tenancy Regulation.

Discussion occurred in relation to the fee as it appeared on the inspection report; however a claim for this fee was not sought.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$550.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$845.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

#### Conclusion

The landlord is entitled to costs claimed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding and 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 06, 2015

---

Residential Tenancy Branch

