



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for compensation under the Act and the tenancy agreement, for damage to and cleaning of the rental unit, and for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

At the outset of the hearing the Tenant acknowledged he was served with the Landlord's evidence. The Tenant testified that he waited too long to submit evidence and did not file what evidence he had.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Respondent a Tenant?

If so, is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began on December 1, 2012, and was for a fixed term of one and a half years. The monthly rent was \$1,500.00, payable on the first day of the month. The Landlord obtained a security deposit of \$750.00 and a pet damage deposit of \$100.00. The parties had a written tenancy agreement.

I note that the tenancy agreement indicates two other renters along with the respondent named here as the Tenant. However, the Landlord has only named the respondent in this matter as the Tenant, for the purposes of this claim. This is described in detail below.

On or about August 1, 2013, the Landlord attended the property and discovered the rental unit had been abandoned by the renters, and their possessions had been removed from the building.

The Landlord performed an incoming condition inspection report; however, the renters abandoned the rental unit without notice to the Landlord prior to an outgoing condition inspection report.

The Landlord testified he had asked the renters to clean up the yard in June and July of 2013, and that was the last time he saw them. The Landlord testified that that they had not paid the rent for August 2013 and had given no notice they were vacating the rental unit.

The Landlord claims **\$1,500.00** for August 2013 rent.

The Landlord testified that he had an oral agreement with the renters that he would keep the utilities in his name and would bill the renters for what they owed.

The Landlord provided testimony about the outstanding utilities due, and provided copies of the utility bills in support of this claim. The Landlord claims **\$533.38** for utilities and gas bills, from May through to early August 2013. The Landlord has adjusted the amounts he claims under the bills to remove seven days from August.

The Landlord claims **\$250.00** to repair a hole in the drywall, including cleaning, filling, sanding, and painting. There was also a stain removed from the floor. An invoice and photograph is provided in evidence for this repair.

The Landlord claims **\$94.89** to replace blinds that were damaged. The Landlord claims these were installed just prior to the tenancy beginning and has provided an invoice and photographs in support of this claim.

Although the Landlord claimed an amount of \$18.91 in his details of dispute, he did not recall what this amount was for. As the Landlord had insufficient evidence on this item, I dismiss this portion of the claim.

The Landlord claimed **\$31.33** for cleaning and re-caulking the bathtub. The Landlord did not recall when the tub was last re-caulked.

The Landlord claims **\$238.20** for dump fees and removing debris from the rental unit left behind by the renters. In support of this the Landlord has provided invoices and photographs of debris left behind.

The Landlord claims **\$99.75** for cleaning the draperies and blinds due to the renters having a dog and a cat, and not cleaning these before they vacated the rental unit. The Landlord testified these window coverings were covered in cat and dog hair. An invoice was provided in evidence for this amount.

The Landlord claims **\$170.63** to rent a hardwood floor sander that was used to sand and repair the floors. The Landlord testified that some of the stains in the floor had to be sanded out, and then the floors had to be re-stained. In evidence the Landlord provided a receipt and photographs of the stains on the floor for this claim.

The Landlord further claims **\$12.07** for cleaning the stove and oven. The Landlord has provided photographs of the stove and oven and which appear to be dirty.

In reply, the respondent Tenant testified that he does not deny the cleaning or damages claimed by the Landlord; however, the Tenant argued he was not responsible to the Landlord for these as he had left the rental unit in or about April of 2013, and did not live in the rental unit for May, June or July. The Tenant claims the other renters on the tenancy agreement are solely responsible to the Landlord for these claims.

The Tenant testified that he did not sign the tenancy agreement and he did not consent to the other renters to put him on the tenancy agreement. He testified he did not agree to the tenancy agreement in writing. He further testified that he was unaware that his name was on the tenancy agreement.

The Tenant testified that the two other renters approached him to share the rent for the subject rental unit. The Tenant believed his tenancy agreement was with the two other renters. He testified that he was out of town when the other renters made these arrangements.

The Tenant testified that one of the other renters was his cousin and he is unable to contact him. He testified he attempted to contact him through the cousin's mother, but she refused to give him the information about where his cousin, one of the other renters, now lived.

The Tenant testified that his tenancy agreement was a verbal arrangement with the other two renters and he gave them verbal notice he was leaving the rental unit on April 30, 2013. The Tenant argued that he should not be responsible for these claims as it was the other renters who failed to pay rent or utilities and that damaged or left the rental unit unclean.

In reply to this the Landlord testified that the Tenant was aware he was the Landlord as he had seen him around the rental unit. In evidence the Landlord supplied a copy of an application to rent and the tenancy agreement. Both of these have the Tenant's name on them. The application form has personal information such as the Tenant's social insurance number, place of employment and birthdate.

The application further indicates that the Tenant was living with the other renters at the time they applied to rent the subject rental unit. He was living with the renters before they took possession of the rental unit and lived in the rental unit with the renters following the move.

I note that the Tenant argued that since the other renters moved his property into the rental unit they had access to this information in order to put it on the application form. He denied giving them this information.

The Landlord testified that he understood that the Tenant and the other two renters would be occupying the rental unit and saw them all at the rental unit at various times.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed from a violation of the *Act*, regulation, or tenancy agreement on the part of the renters or Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

### **Tenant Liability**

Having reviewed the evidence and testimony of the parties, I find that the respondent is a Tenant under the Act and tenancy agreement for the following reasons.

I find that the Tenant was living with his cousin and the other renter (the cousin's girlfriend), and knew his cousin and the other renter were moving into a different rental unit – the subject rental unit. I find the Tenant agreed to move into the subject rental unit with the other renters.

I find the Tenant had insufficient evidence that he or the other renters had the Landlord's prior written consent to sublet a portion of the rental unit to the Tenant, which is required under the Act.

Therefore, I find the Tenant agreed to rent the rental unit along with the other renters and is therefore considered a co-tenant under the Act.

While the Tenant did not sign the tenancy agreement, I find his name and personal information was provided to the Landlord for that purpose; that he agreed to live in the rental unit with the other renters; and, that since he was out of town at the time they

signed the tenancy agreement (according to his own testimony), he had the other renters act as his agents in adding him to the tenancy agreement. Furthermore, had this Tenant wanted to clarify his living arrangement with the Landlord, he should have taken active steps to seek out the Landlord and ensure his tenancy was with the renters and not the Landlord. He failed to do so and I find the Tenant is unable to now argue he was not a tenant to this Landlord.

Therefore, I am unable to find that the respondent Tenant is not liable for the claims of the Landlord. I further find the Tenant has insufficient evidence to prove when he moved out of the rental unit and therefore, I find him liable to the Landlord up to and including the time the rental unit was abandoned.

Policy Guideline 13 to the Act sets out that co-tenants are jointly and severally liable under the tenancy agreement. This means the Landlord may claim against one or all of the co-tenants. The guideline further explains that if the Landlord claims against only one tenant, as was done here, it falls to all the co-tenants to apportion among themselves their individual liability to the Landlord. In other words, it is up to them to share the liability between themselves, even though only one Tenant is named in this matter.

Lastly, I note that during the hearing I discussed with the Tenant whether or not he wanted an opportunity to adjourn the hearing to add the other co-tenants, or third party them, as respondents to the applicant's claim. However, the Tenant testified he did not know the co-tenants whereabouts or how to locate them. Therefore, it appeared that such an adjournment did not meet the criteria, and would significantly prejudice the Landlord in his claim, pursuant to Rule of Procedure 6.4.

### **Landlord's Claims**

I find the Tenant breached the Act and tenancy agreement by failing to pay rent when due, and that he failed to give the Landlord a valid Notice to End Tenancy. I also find the Tenant breached the Act and tenancy agreement when he did not clean the unit, or make necessary repairs. I find this breach has caused losses to the Landlord.

I find that the Landlord has established most of his claims by providing sufficient evidence and testimony. However, I have dismissed one of the Landlord's claims as he could not recollect what the amount claimed was for.

I further note that the Tenant did not dispute the claims of the Landlord, rather he simply denied responsibility. However, I have found him to be a co-tenant and therefore, he is jointly and severally liable as explained above.

I also find the Landlord mitigated his losses by taking reasonable steps to repair and clean in order to limit the losses.

Therefore, I allow the Landlord **\$2,980.25** for these claims, comprised of the following amounts: rent of \$1,500.00 for August 2013, utilities of \$533.38, repairs to drywall and floors \$250.00, replacement blinds \$94.89, cleaning and re-caulking bathtub \$31.33, hauling and dump fees \$238.20, drapes and blinds cleaning \$99.75, hardwood floor sanding \$170.63, stove and oven cleaning \$12.07, and the filing fee for the Application of \$50.00.

Section 7 of the Act states:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(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.

[Reproduced as written.]

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Based on all the above, I find that the Landlord has established a total monetary claim of **\$2,980.25** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the Landlord retain the deposits of **\$850.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,130.25**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The respondent is a Tenant and is jointly and severally liable with the other co-tenants.

The Landlord has shown the Tenant is responsible for the breaches of the Act and tenancy agreement as a co-tenant, and that the Landlord has suffered a loss of \$2,980.25, as described above.

The Landlord may keep the security and pet damage deposits in the amount of \$850.00 in partial satisfaction of the claims and is granted a monetary order for the balance due of **\$2,130.25**.

This order may be enforced in the Provincial Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: May 29, 2015

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Residential Tenancy Branch



