



# 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 was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unpaid rent, to retain the security and pet deposits and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the included evidence and testimony provided.

### Preliminary Matters

The landlord applied on October 10, 2014. The tenant confirmed service of the hearing documents and evidence on October 15, 2014.

The tenant received a copy of the tenancy agreement, the move-out condition inspection report, 40 photographs and an October 10, 2014 estimate for painting.

The landlord did not submit any evidence with the application. The landlord said that an evidence package was given to the Residential Tenancy Branch (RTB) on May 19, 2015. The landlord believed she had to make an evidence submission no later than five days before the hearing. This evidence was not before me.

I explained that the Rules of Procedure in place at the time the application was made require the landlord to submit all evidence, to the extent possible, with the application and no less than 14 days before a hearing. At the least the evidence should be supplied to the respondent and RTB as soon as possible. This did not occur. Therefore, I determined that the late evidence must be set aside. The landlord was at liberty to make oral submissions in relation to the claim made.

I note that the claim for unpaid rent falls within the realm of loss of rent revenue.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$4,400.00 for loss of October 2014 rent revenue?

Is the landlord entitled to compensation for painting and cleaning in the sum of \$2,000.00 and \$300.00, respectively?

May the landlord retain the deposits paid in satisfaction of the claim?

Background and Evidence

The one year fixed term tenancy commenced on September 1, 2013. The agreement required the tenant to vacate at the end of the fixed-term, August 31, 2014. Rent was \$4,400.00 per month, due on the first day of each month. A pet and security deposit in the sum of \$2,200.00 each was paid. A move-in condition inspection report was completed.

There was no dispute that in August 2014 the tenant and property owner communicated via email. The tenant asked for an extension of the tenancy. The landlord replied that he would be happy to extend the lease, that the tenant would not be given notice to vacate and that he should bring the landlord post-dated cheques. The landlord also said that they could then meet to complete paperwork. The tenant said that during September he made attempts to meet with the landlord but the landlord did not respond.

On September 21, 2014 the tenant emailed the landlord to tell the landlord he would vacate effective September 30, 2014. The landlord responded that the tenant needed to give proper notice to end the tenancy.

The tenant said that he believed the tenancy had been extended, under the same terms as the written agreement, to the end of September 2014. When a new agreement was not signed the tenant thought the fixed term had been extended by one month only, to the end of September.

A move-out inspection report was completed on October 3, 2014 and signed by the parties. The tenant signed disagreeing with the content of the report. The landlord received the tenant's forwarding address on October 3, 2014 and applied claiming against the deposits within 15 days.

The landlord said they accepted the notice to end the tenancy given by the tenant as the tenant had found a new rental unit. The landlord gave the rental listing to an outside company to manage. The landlord said the unit could not be immediately shown as the tenant was in the process of packing and the unit was not ready. The landlord was able to locate new tenants for November 2014. The tenant said that during September 2014 no request for showing the unit was made by the landlord.

The landlord said that there were multiple holes in the walls from hanging artwork in the two bedrooms and entry hallway. There were scratches in the walls of the bedrooms and living room. The landlord confirmed that the damage was not caused by pets; the tenant had two kittens.

The landlord has an October 15, 2014 invoice in the sum of \$3,425.00 for painting and filling of holes and repair of baseboards. There was no dispute the unit was painted just prior to the tenancy commencing.

The tenant disputed the claim for repair and painting. The holes were for artwork only. They hung 10 paintings, several which required two nails. There had been a television bracket over the fireplace. The tenant removed this bracket and hung art over the fireplace. Removal of the bracket would have left some holes in the wall. The few scratches on the walls were from normal wear and tear after a one year tenancy.

The tenant agreed that the landlord is entitled to compensation for cleaning in the sum of \$300.00. There was a term in the tenancy agreement setting out a fee for cleaning and the tenant believed he had pre-paid this sum.

The tenant wishes to have any possible doubling provision applied to the pet deposit.

### 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.

From the oral testimony of the parties I find that the claim for painting and wall repair is dismissed. RTB policy (#1) recognizes that tenants will put up pictures and that a landlord may set rules as to how that can be done. There was no evidence before me that the landlord set any rules for artwork hanging. If there are an excessive number of holes a tenant may have to repair those holes. There was no evidence of an excessive number of holes made to the walls or any deliberate damage caused. The television bracket can be reinstalled in the same location as it had been previously. Therefore, I find that the claim for painting and wall repair is related to normal wear and tear and is dismissed.

The tenant has agreed to pay \$300.00 for the cost of cleaning paid by the landlord. Therefore, in support of the mutual agreement I find, pursuant to section 63(2) of the Act that the landlord is entitled to compensation in the sum of \$300.00 for cleaning.

I find that there was a meeting of the minds in relation to the extension of the tenancy although the tenant does not now agree. The landlord's response to the tenant's request to extend the tenancy had the hallmark of agreement. The landlord requested multiple post-dated cheques, agreed the tenancy could be extended and that the tenant would not be given a notice to vacate.

I find that the landlord's response indicated the tenant could remain and expect the tenancy to continue. If the landlord had intended to extend the tenancy by only one month with vacancy required at the end of that month it makes no sense that the landlord would request post-dated cheques and expect to complete any paperwork. If the tenancy had been extended by only one month the tenant would have been required to vacate at the end of September 2014 and no notice, by either party, would have been necessary, as the original term of the tenancy agreement required vacancy at the end of

the fixed-term. Therefore, I find, on the balance of probabilities that the tenancy converted to a month-to-month term effective September 1, 2014.

As I have found the tenancy converted to a month-to-month term the tenant was then required to provide notice ending the tenancy that complied with section 45 of the Act. Proper notice given on September 21, 2014 would have been effective on October 30, 2014.

However, a breach of the legislation by the tenant does not confer an automatic right to compensation by the landlord. Section 7 of the Act requires the landlord to demonstrate that they took steps to mitigate any loss by immediately seeking new tenants. There was no evidence of any showings of the unit in September or any information on when the advertising began. Even though some painting was required and the tenant was packing I find it would have been reasonable to immediately advertise and show the unit to prospective tenants.

As the landlord was able to locate new tenants for November 2014 it is clear, in the absence of details of the search for new tenants that advertising did occur at some point and that efforts were made to mitigate the loss of rent revenue. Notice given only nine days before the end of the month gave the landlord little time to locate new tenants effective October 1, 2014. Therefore, based on the breach of the Act by the tenant and the absence of evidence of immediate steps to mitigate by the landlord I find that the landlord is entitled to compensation for the last 2 weeks of October 2014 rent revenue in the sum of \$2,200.00. The balance of the claim is dismissed.

In relation to the disposition of the pet deposit, I have considered legislation and RTB policy.

Section 38(1) of the Act provides:

*(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

- (a) the date the tenancy ends, and*
- (b) the date the landlord receives the tenant's forwarding address in writing,*

*the landlord must do one of the following:*

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
- (d) **make an application for dispute resolution claiming against the security deposit or pet damage deposit.***

Section 38(6) of the Act provides:

*(6) If a landlord does not comply with subsection (1), the landlord*

- (a) may not make a claim against the security deposit or any pet damage deposit, and*
- (b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.***

(Emphasis added)

In this case the landlord submitted a claim against the deposits within the required time-frame but confirmed that there was no claim against the pet deposit for damage caused by a pet.

Section 38(7) of the Act provides:

*(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.*

Sections 38(3) and (4) of the Act allow a landlord to retain a security or pet deposit if they have previously obtained an Order for the tenant to pay the landlord, if the tenant agrees in writing at the end of a tenancy or after a tenancy if an Order is issued by an arbitrator. The landlord did not have the authority granted by section 38 of the Act to retain any portion of the pet deposit and did not have a claim against the pet deposit for damage caused by a pet. As a pet deposit may only be used for damage caused by a pet, I find that deposit should have been returned to the tenant within 15 days of October 3, 2014 when the landlord received the tenant's written forwarding address.

Even though the total claim made by the landlord exceeded the value of both deposits that had been held in trust the Act requires return of the pet deposit within 15 days, when there is no pet damage caused to the unit.

Therefore, pursuant to section 38(6) I find that the tenant is entitled to return of double the \$2,200.00 pet deposit.

In summary; the landlord is entitled to compensation in the sum of \$300.00 for cleaning and \$2,200.00 for loss of one half of October 2014 rent revenue. The balance of the claim is dismissed.

As the landlord's application has merit I find that the landlord is entitled to recover the \$50.00 filing fee from the tenant 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 \$2,200.00, in satisfaction of the monetary claim for loss of rent revenue.

I find that the landlord is entitled to retain the balance owed in the sum of \$300.00 for cleaning from the doubled pet deposit.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance.

Therefore, I find that the tenant is entitled to the balance of the doubled pet deposit, in the sum of \$4,050.00 (\$4,400.00 less \$350.00).

Based on these determinations I grant the tenant a monetary Order in the sum of \$4,050.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of \$300.00 for cleaning (by agreement) and \$2,200.00 for loss of one-half of October 2014 rent revenue. The balance of the claim is dismissed.

The landlord may retain the security deposit and a portion of the pet deposit in satisfaction of the claim.

The landlord is entitled to filing fee costs.

The tenant is entitled to return of the balance of the doubled pet deposit.

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: May 25, 2015

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Residential Tenancy Branch

