



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for damage to the unit, site or property, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on November 14, 2014. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is there damage and if so how much?
4. Is the Landlord entitled to compensation for damage and if so how much?
5. Is the Landlord entitled to keep the Tenant's security?

### Background and Evidence

This tenancy started on April 8, 2014 as a fixed term tenancy with an expiry date of March 31, 2015. Rent was \$890.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$445.00 on March 21, 2014. The Landlord said the Tenant moved out of the rental unit on October 31, 2014 as a result of a Notice to End Tenancy for Cause. The Landlord said a move in condition inspection was completed and signed on April 6, 2014 and a move out inspection was not completed but signed by the Tenant. The Tenant said the inspection was done October 15, 2014 and the Landlord said the move out inspection was done October 31, 2014.

The Landlord said that the Tenant moved out of the rental unit on October 31, 2014 which was before the end of the fixed term in the tenancy agreement which was March 31, 2015. The Landlord continued to say he was unable to rent the unit until January 1, 2015. The Landlord said he advertised the unit on the teacher's website, craigslist and he showed the unit approximately 45 times to potential renter. The Landlord said because this was a fixed term tenancy and because he was unable to rent the unit for November and December, 2014 the Landlord said he is requesting compensation for the lost rental income for November and December, 2014 in the amount of \$890.00 for each month.

Further the Landlord said he was acting as an agent for the owner of the property but he wrote his name in the tenancy agreement as the Landlord. As a result of being an agent for the owner the Applicant/Landlord said he is requesting \$267.00 as a re-rental fee, and \$1,200.00 for his time to advertise and show the rental unit as well as his time to prepare for this hearing and to evict the tenant earlier. The Landlord said he spent 40 hours at \$30.00 per hour dealing with this tenancy. The Landlord said he is claiming \$1,200.00 for his time.

Further the Landlord said he is requesting reimbursement for the carpet cleaning costs of \$125.16 as the Tenant did not shampoo the carpets at the end of the tenancy.

The Tenant said that she was not aware that the Landlord was an agent and there was nothing said about fees for re-renting or wages for the Landlord's time. Further the Tenant said there is nothing in the tenancy agreement about fees for re-renting or for the Landlord's time. As well the Tenant said the unit was a nice clean unit and the Landlord should have been able to rent it easily. The Tenant said 2 month was a long time to have the unit empty. As a result the Tenant said she should not be responsible for the full to months of rent when the unit was empty. The Tenant said she is willing to pay the carpet cleaning costs of \$125.16 and half the November, 2014 rent in the amount of \$445.00. As well the Tenant said the Landlord can keep her security deposit of \$445.00 as partial payment of those amounts. The Tenant said this is what seems fair to her.

The Tenant made a settlement offer to the Landlord of her security deposit and \$125.16 for carpet cleaning.

The Landlord declined the offer and said this does not come close to covering the lost rental income due to the eviction that resulted from the Tenant operating an illegal day care in the rental unit.

The Tenant said she was not operating a day care but she was babysitting some kids to help support herself and her family.

The Landlord also requested to recover the \$50.00 filing fee for his application.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenant did not give the Landlord proper notice to end the tenancy and the Tenant did not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the lost rental income for November and December, 2014 in the total amount of \$1,780.00.

With respect to the Landlord's claim for compensation for his time to re-rent the unit, for time to evict the tenant and his time to prepare for this hearing I find these items are all part of the Landlord's duties and that the rent is compensation enough. I find the Applicant is the Landlord. I dismiss the Landlord's claims for compensation for his time to manage the rental unit in the amount of \$1,200.00.

With respect to the re-rent fee of \$267.00; I find the fee was not included in the tenancy agreement as a liquidated damage fee and therefore is not valid. Any fees that result in costs due to an early end of a tenancy must be agreed to in the tenancy agreement. I dismiss the Landlord's request for a re-rent fee of \$267.00.

As the Landlord has been partially successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the lost rental income. The Landlord will receive a monetary order for the balance owing as following:

	Lost rental income	\$ 1,780.00
	Carpet cleaning	\$ 125.16
	Recover filing fee	\$ 50.00
	Subtotal:	\$1,955.16
Less:	Security Deposit	\$ 445.00
	Subtotal:	\$ 445.00
	Balance Owing	\$ 1,510.16

Conclusion

A Monetary Order in the amount of \$1,510.16 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: June 10, 2015

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Residential Tenancy Branch

